

**I·C·A·C**

INDEPENDENT COMMISSION  
AGAINST CORRUPTION  
NEW SOUTH WALES



## INVESTIGATION INTO THE CONDUCT OF IAN MACDONALD, RONALD MEDICH AND OTHERS

**ICAC REPORT  
JULY 2013**



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Mr President  
Madam Speaker

In accordance with section 74 of the *Independent Commission Against Corruption Act 1988* I am pleased to present the Commission's report on its investigation into the conduct of Ian Macdonald, Ronald Medich and others.

I presided at the public inquiry held in aid of this investigation.

The Commission's findings and recommendations are contained in the report.

I draw your attention to the recommendation that the report be made public forthwith pursuant to section 78(2) of the *Independent Commission Against Corruption Act 1988*.

Yours faithfully

A handwritten signature in black ink, appearing to read 'D Ipp', written over a light blue rectangular background.

The Hon David Ipp AO QC  
Commissioner

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# Summary of investigation and results

This investigation, known as Operation Jarilo by the NSW Independent Commission Against Corruption (“the Commission”), concerned allegations that:

- Ian Macdonald, while NSW minister for energy, by arrangement with a businessman, Ronald (Ron) Medich, exercised his influence as a minister of the Crown to set up meetings between Mr Medich, and George Maltabarow, the managing director of EnergyAustralia on 1 June 2009 and between Mr Medich and Craig Murray, the managing director of Country Energy, on 15 July 2009, for the purpose in both cases of allowing Mr Medich to promote his business interests to these executives
- shortly prior to the second meeting of 15 July 2009, Fortunato (Lucky) Gattellari, at the direction of Mr Medich and at the request of Mr Macdonald, arranged the provision to Mr Macdonald of sexual services and hotel accommodation to take place immediately after the second meeting
- Mr Macdonald utilised the services and hotel accommodation so arranged
- the services and hotel accommodation were provided to Mr Macdonald and accepted by him as a reward for his having arranged the meetings involving the energy executives and Mr Medich.

## Results

Findings are made in this report that Mr Macdonald, Mr Medich and Mr Gattellari engaged in corrupt conduct.

Chapter 4 of the report contains findings that Mr Macdonald engaged in corrupt conduct by exercising

his influence as the minister for energy to cause Mr Murray to attend the Tuscany Restaurant at Leichhardt in Sydney on 15 July 2009 so that Mr Medich, and any other person Mr Medich wished to have present, could attend the meeting and promote the electrical services of Rivercorp Pty Ltd (“Rivercorp”), an electrical contracting company in which Mr Medich had a significant financial interest, to Mr Murray and, prior to the meeting, soliciting the sexual services of a woman as a reward for arranging the meeting and, on 15 July 2009, receiving from Mr Medich and Mr Gattellari the services of a woman and hotel accommodation as a reward for arranging the meeting.

Chapter 4 also contains findings that Mr Medich and Mr Gattellari engaged in corrupt conduct by arranging hotel accommodation and the services of a woman to be provided to Mr Macdonald as a means of rewarding Mr Macdonald for showing favour to Mr Medich by arranging the 15 July 2009 meeting with Mr Murray so that Mr Medich, and any other person he wished to have present, could attend the meeting and promote the electrical services of Rivercorp to Mr Murray.

Statements are made pursuant to section 74A(2) of the *Independent Commission Against Corruption Act 1988* (“the ICAC Act”) that the Commission is of the opinion that consideration should be given to obtaining the advice of the Director of Public Prosecutions (DPP) with respect to the prosecution of Mr Macdonald for the offence of corruptly receiving a benefit contrary to section 249B(1) of the *Crimes Act 1900* (“the Crimes Act”) and the common law offence of misconduct in public office.

Statements are also made that the Commission is of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Medich for an offence of corruptly giving a benefit



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contrary to section 249B(2) of the Crimes Act.

Statements are also made that consideration should not be given to obtaining the advice of the DPP with respect to the prosecution of Mr Gattellari for any criminal offence.

## **Corruption prevention**

The Commission has not made corruption prevention recommendations in this report. The investigation does, however, raise the issue of inappropriate use of influence by a minister. This issue also arises in other investigations in respect of which reports are intended to be released at the same time and will be dealt with, along with other corruption prevention issues, in a separate report.

## **Recommendation that this report be made public**

Pursuant to section 78(2) of the ICAC Act, the Commission recommends that this report be made public forthwith. This recommendation allows either Presiding Officer of the Houses of Parliament to make the report public, whether or not Parliament is in session.



# Chapter 1: Background

This chapter sets out background information concerning the investigation conducted by the NSW Independent Commission Against Corruption (“the Commission”) and those principally involved.

## How the investigation came about

In October 2010, Ronald (Ron) Medich, Fortunato (Lucky) Gattellari, Senad Kaminic and others were arrested in relation to the murder of Michael McGurk. Mr Kaminic and Mr Gattellari participated in interviews with the investigating police officers after their arrest. During the course of his interview with these officers, Mr Kaminic said that he and Mr Gattellari had arranged the services of a prostitute for Ian Macdonald in 2009. The NSW Police Force provided this information to the Commission.

Mr Gattellari and Mr Kaminic were interviewed by Commission officers. Mr Gattellari said that, in 2009, Mr Macdonald arranged to introduce Mr Medich and another person to Country Energy executives during a dinner held at the Tuscany Restaurant at Leichhardt in Sydney for the purpose of Mr Medich discussing with the executives the possibility of Rivercorp Pty Ltd (“Rivercorp”), an electrical contracting company in which Mr Medich had a significant financial interest, securing contracts for the supply of services to Country Energy. Mr Gattellari said that, at the request of Mr Medich, he arranged for a number of women to attend the restaurant on the evening of the dinner as he understood that Mr Macdonald intended to select a woman with whom he wished to have sexual relations. According to Mr Gattellari, Mr Medich approached him during the course of the evening and indicated that Mr Macdonald had chosen “Tiffanie”, one of the women Mr Gattellari had invited to the restaurant. Mr Gattellari said that he instructed Mr Kaminic to take Tiffanie to the Four Seasons Hotel. Mr Kaminic told Commission officers that he took Tiffanie to the Four Seasons Hotel at Mr

Gattellari’s request.

Other enquiries conducted by the Commission confirmed that Mr Macdonald dined at the Tuscany Restaurant on the evening of 15 July 2009 with Craig Murray and William Frewen, senior executives from Country Energy. During the course of the dinner, Mr Medich and Kim Shipley, a senior executive from Rivercorp, joined Mr Macdonald’s table and promoted Rivercorp’s electrical services to Mr Murray and Mr Frewen. Records indicated that, during the evening of 15 July 2009, Mr Macdonald’s mobile telephone was used at a location within close proximity to the Four Seasons Hotel.

## Why the Commission investigated

The information obtained by the Commission provided direct corroboration of key aspects of the statements made by Mr Gattellari and Mr Kaminic.

If Mr Macdonald had used his influence as a minister to arrange the meetings with energy executives for the purpose of advancing the private business interests of Mr Medich, and sought or received a reward from Mr Medich for doing so, such conduct would constitute corrupt conduct within the meaning of the *Independent Commission Against Corruption Act 1988* (“the ICAC Act”). Such conduct on Mr Macdonald’s part could constitute or involve the dishonest exercise of his official functions and would therefore come within section 8(1)(b) of the ICAC Act. It could also constitute a breach of public trust and therefore come within section 8(1)(c) of the ICAC Act. For the purposes of section 9(1)(a) of the ICAC Act, his conduct could involve offences of corruptly soliciting a benefit under section 249B(1) of the *Crimes Act 1900* (“the Crimes Act”), corruptly receiving a benefit under section 249B(1) of the Crimes Act and the common law offence of misconduct in public office.

If Mr Medich and Mr Gattellari provided benefits to Mr Macdonald as a reward for arranging meetings with energy



executives for the purpose of advancing the private business interests of Mr Medich, such conduct could amount to corrupt conduct. Such conduct on their part could adversely affect, either directly or indirectly, the honest or impartial exercise of official functions by Mr Macdonald under section 8(1)(a) of the ICAC Act. For the purposes of section 9(1)(a) of the ICAC Act, their conduct could also involve criminal offences of corruptly giving a benefit under section 249B(2) of the Crimes Act.

Ministers of the Crown are required to maintain the public trust placed in them by performing their duties with honesty and integrity and in the best interests of the people of NSW. In light of the results of the Commission's preliminary enquiries and the seriousness of the allegations, the Commission decided that it was in the public interest to conduct an investigation for the purpose of establishing whether corrupt conduct had occurred.

The Commission's role is set out in more detail in Appendix 1.

## Conduct of the investigation

The Commission's investigation involved obtaining information and documents by issuing notices under section 22 of the ICAC Act as well as interviewing and obtaining statements from a number of witnesses. Evidence was taken from 11 witnesses at compulsory examinations conducted before the Commission, including Mr Macdonald, Mr Medich and Mr Gattellari.

In summary, Mr Gattellari confirmed his earlier statement that, at Mr Medich's request, he arranged for Tiffanie and other women to attend the Tuscany Restaurant on the evening of 15 July 2009. Mr Medich said that he drove Mr Macdonald to the Four Seasons Hotel so that he could rendezvous with Tiffanie. Mr Medich denied, however, that he provided any reward to Mr Macdonald for introducing him to public sector energy executives.

Mr Macdonald acknowledged that he introduced Mr Medich to Mr Murray and Mr Frewen during the course of the evening and that Mr Medich drove him to the Four Seasons Hotel after Mr Murray and Mr Frewen had left the restaurant. He said that he went to the hotel for the purpose of receiving a remedial massage, which had been suggested to him by Mr Medich. He denied accepting this service as a reward for introducing Mr Medich to the Country Energy executives.

An examination of Mr Macdonald's ministerial diary revealed that Mr Macdonald may have dined with George Maltabarow, the managing director of EnergyAustralia, on 1 June 2009 at the Tuscany Restaurant. Mr Maltabarow was interviewed by Commission investigators about his

dinner meeting with Mr Macdonald and subsequently gave evidence about the meeting before the Commission at a compulsory examination. He said that Mr Macdonald invited him to attend the Tuscany Restaurant on 1 June 2009 alone, and that during the course of the evening Mr Macdonald introduced him to Mr Medich. Mr Maltabarow said that Mr Macdonald left him alone with Mr Medich, who took the opportunity to promote Rivercorp to Mr Maltabarow as a company that was capable of, and interested in, providing electrical services to EnergyAustralia.

## The public inquiry

The Commission reviewed the information that had been gathered during the investigation and, after taking into account this material and each of the matters set out in section 31(2) of the ICAC Act, determined that it was in the public interest to hold a public inquiry. In making that determination, the Commission had regard to the following considerations:

- the risk of undue prejudice to the reputations of Mr Macdonald, Mr Medich and Mr Gattellari
- the seriousness of the alleged conduct.

The Commission concluded that the public interest in exposing the matter outweighed the public interest in preserving the privacy of the persons concerned.

The public inquiry was conducted over seven days, commencing on 24 November 2011 and continuing until 2 December 2011. The Hon David Ipp AO QC, Commissioner, presided at the inquiry. Geoffrey Watson SC acted as Counsel Assisting the Commission. Mr Macdonald and 17 other witnesses gave evidence.

At the conclusion of the public inquiry, Counsel Assisting prepared submissions setting out the evidence and what findings and recommendations the Commission could make based on that evidence. These submissions were provided to Mr Macdonald, Mr Medich and other relevant persons, and submissions were invited in response. All submissions in response received by the Commission have been taken into account in preparing this report. There is one matter, however, that warrants comment. This concerns the submissions provided to the Commission by John Bamford, Mr Medich's solicitor, at the public inquiry.

Mr Bamford's initial submissions consisted of 412 pages of single-spaced text in small font and relied extensively upon material that had not been tendered as evidence at the public inquiry. In the Commission's view, these submissions constituted an abuse of process. The Commission rejected them. The Commission, however, provided Mr Bamford with the opportunity to provide new submissions that did

not exceed 80 pages in length and did not refer to material that had not been tendered before the Commission. Mr Bamford provided submissions that complied with these requirements. These submissions, however, contained many passages whose meaning was unclear and this made it difficult for the Commission to understand some of the arguments advanced. The Commission is, nevertheless, satisfied that it has an overall understanding of the salient propositions advanced on behalf of Mr Medich.

## The delay in reporting

The last set of submissions from counsel representing persons involved in the public inquiry was received on 23 April 2012. By that time, the Commission had decided that it was in the public interest to conduct a public inquiry into other allegations involving Mr Macdonald. These allegations, which became known as operations Jasper and Acacia, related to the circumstances in which certain coal mining exploration licences were granted and whether Mr Macdonald had corruptly used his position as a minister of the Crown to advantage the private interests of others. Given the similarity in the alleged conduct of Mr Macdonald raised in the three operations, the Commission decided it was in the public interest to delay determining the issues raised in Operation Jarilo (the investigation that is the subject of this report) until after the evidence had been led in the public inquiry dealing with the allegations in operations Jasper and Acacia.

## The nature of Mr Medich's involvement in Rivercorp

In 2007, Rivercorp was in financial distress and in need of short-term finance. In early 2008, Tony Rowe, a joint proprietor of Rivercorp, was introduced to Mr Gattellari on the basis that he might be a potential financier of the company. Mr Gattellari was not in a position to provide financial support to Rivercorp. He approached Mr Medich, his friend and business associate, who agreed to invest in the company by lending money to RIV Developments Pty Ltd ("RIV Developments"), a company owned and controlled by Mr Gattellari. RIV Developments, in turn, lent this money to Rivercorp. Mr Medich provided about \$15 million in financial support to Rivercorp and its associated companies in this way.

By 30 June 2009, Mr Medich consolidated his position as the lender to Rivercorp by securing the transfer of shares in Rivercorp to RIV Group Pty Ltd ("RIV Group"), a company that he owned and controlled.

In May 2008, Mr Shipley, an accountant with a background in managing businesses in financial distress, was appointed as Rivercorp's chief executive officer.

In October 2008, Rivercorp entered into voluntary administration. Finding profitable work for the company became a primary concern of Mr Gattellari, Mr Shipley and others connected with the management of Rivercorp. Notwithstanding that Mr Medich acknowledged that he provided significant financial support to Rivercorp, he denied, in effect, that he was involved in finding work for the ailing company. For the reasons discussed below, Mr Medich's evidence about this issue was unconvincing and is rejected by the Commission.

In February 2009, Mr Gattellari recruited Frank Moio, then proprietor of the Tuscany Restaurant to find work for Rivercorp. According to Mr Gattellari, Mr Moio represented that he was able to acquire contracts for Rivercorp through his business connections, many of whom attended his restaurant. Mr Shipley said that Mr Moio also represented that he knew numerous politicians. Mr Moio did not dispute this evidence.

Mr Gattellari's agreement with Mr Moio was reduced to writing on 9 February 2009. The written agreement provided that Mr Moio would use his personal connections with "various company officials and government ministers" to "secure working contracts" for Rivercorp in return for the payment to Mr Moio of \$3,000 each week.

It was not disputed that Mr Macdonald was a government minister with whom Mr Moio had a personal connection. Mr Moio said that he had a close and longstanding connection with Mr Macdonald and that Mr Macdonald would attend his restaurants on a weekly basis. Mr Macdonald agreed that he and Mr Moio were on friendly terms and that he attended Mr Moio's restaurant at Leichhardt on a regular basis.

Mr Gattellari said that Mr Medich knew and approved of the decision to engage Mr Moio to act on behalf of Rivercorp. He said that Mr Medich believed that Mr Moio had contacts who could secure extremely profitable contracts for Rivercorp. Mr Medich denied any such involvement. The Commission rejects his evidence about this. Mr Gattellari's evidence is supported by Mr Moio. Mr Moio said that Mr Medich told him that he had bought a company, which he knew nothing about, and that he wanted Mr Moio's help to find suitable work for it. Mr Moio said, in effect, that Mr Medich had encouraged him to enter into the agreement with Mr Gattellari. Mr Moio had no motive to lie about this issue and the Commission accepts his evidence. The Commission is satisfied that Mr Gattellari entered into the agreement with Mr Moio with Mr Medich's knowledge and approval.

Mr Gattellari said Mr Moio wanted part of his remuneration under the agreement paid as a wage to Vincenzo Pizzati, Mr Moio's son-in-law, and the balance to be paid to Mr Moio in cash on a weekly basis. From 11

February to 3 June 2009, Rivercorp paid \$1,503.39 each week to Mr Pizzati as wages, despite the fact that Mr Pizzati performed no work for Rivercorp during this period.

Mr Pizzati explained this anomaly in the following way. He said that he was placed on the Rivercorp payroll after he accepted an offer of employment with Rivercorp from Mr Medich. Mr Medich denied this. Winston Terracini SC, who together with Peter Stitz appeared for Mr Medich, suggested to Mr Pizzati that the offer of employment did not come from Mr Medich but from Mr Gattellari. Mr Pizzati replied, “no it was Ron Medich that offered me the job, I never spoke to Lucky Gattellari about that”. There was no reason for Mr Pizzati to lie about this issue. The Commission accepts his evidence.

Mr Moio said that he did not receive any payments from Mr Gattellari under the agreement and denied arranging for payments to be made to Mr Pizzati. The Commission rejects this evidence. Mr Gattellari said that he regularly paid Mr Moio the balance of money owing to him under the agreement in cash. The Commission accepts this evidence. It is supported by Mr Shipley.

Mr Shipley said that Mr Gattellari complained to him on a number of occasions that he was required to pay Mr Moio and was paying him. In the Commission’s view, Mr Pizzati would not have received the benefit of payments that were intended to remunerate Mr Moio for his efforts in finding work for Rivercorp unless Mr Moio had authorised such an arrangement. Furthermore, Mr Shipley, who was instructed by Mr Gattellari to place Mr Pizzati on the Rivercorp payroll, said he complained to both Mr Medich and Mr Gattellari about the arrangement to pay Mr Pizzati and, on one occasion, stopped the payments. He said that shortly after doing so, Mr Moio complained to him that his son-in-law had not been paid. The Commission has no reason to doubt Mr Shipley’s evidence about this matter.

The Commission is satisfied that the employment of Mr Pizzati was a sham and was set up by Mr Medich and Mr Gattellari as a means of secretly paying Mr Moio for his efforts in finding work for Rivercorp. The Commission is also satisfied that Mr Moio received payments from Mr Gattellari and authorised payments to be made to Mr Pizzati under the agreement.

Mr Medich’s involvement in the decision to engage Mr Moio on behalf of Rivercorp, and his role in ensuring that Mr Pizzati received some of the money due to Mr Moio under the agreement, demonstrates his interest in finding work for Rivercorp.

Other evidence supports this conclusion. Mr Gattellari said that, while Mr Medich had no role to play in the day-to-day management of the electrical companies, he and Mr Shipley kept Mr Medich well informed about matters relating to Rivercorp’s business development. This is borne out by

the fact that, from at least April 2009, Mr Shipley and Mr Rowe, a joint proprietor of Rivercorp, regularly sent emails to Mr Medich and senior Rivercorp executives containing reports about potential business opportunities for Rivercorp and the progress of attempts to secure those opportunities.

In late June 2009, Mr Shipley travelled to Melbourne with Mr Medich and Mr Gattellari. Mr Shipley said that, while in Melbourne, he was able to gain introductions through Mr Medich to persons involved in enterprises relevant to the work engaged in by Rivercorp. Mr Medich agreed that he travelled to Melbourne with Mr Shipley. He said, however, that the purpose of his travel was unrelated to Rivercorp. The Commission rejects this evidence. Mr Shipley’s evidence about the Melbourne visit is supported by an email he sent to Mr Rowe on 30 June 2009, a copy of which he also sent to Mr Medich and Mr Gattellari. In the email, Mr Shipley confirmed that he, Mr Gattellari and Mr Medich had “spent the last few days in Melbourne assessing opportunities for the [Rivercorp] group”, including identifying “specific opportunities” arising from meetings with various businessmen. In the Commission’s view, there is no reason to doubt that Mr Shipley accurately described the nature of Mr Medich’s involvement in the visit to Melbourne in the email, and the Commission accepts Mr Shipley’s evidence about this issue.

Mr Rowe said that towards the end of April 2009, Mr Medich told him that Rivercorp would not need to worry about “government opportunities” moving forward as he was “particularly well-connected” with Mr Macdonald. Mr Rowe identified an email he sent to Mr Medich on 29 April 2009, the day after their conversation, which included information about the nature of the work that could be performed by the Rivercorp group of companies “on the understanding that he [Mr Medich] was talking to Mr Macdonald”. The email was entitled, “Details for Ian McDonald [sic]”. Mr Rowe said that Mr Medich had told him that he, Mr Rowe, should not doubt his ability “to utilise Mr Macdonald to deliver opportunities to Rivercorp”.

The Commission accepts Mr Rowe’s evidence about his conversation with Mr Medich. Mr Moio said that he saw Mr Macdonald and Mr Medich frequently having lunch together at the Tuscany Restaurant. Mr Macdonald denied that he and Mr Medich had lunch as “regularly as it’s being inferred”. He said, however, that Mr Moio introduced him to Mr Medich in early 2009, that he and Mr Medich shared an interest in horse racing at a time when that industry was undergoing change, and that he was “keen” to know Mr Medich because of his “solid connections in the racing sector”. Mr Macdonald said that he arranged to have lunch or dinner with Mr Medich on one occasion in January 2009 and, on other occasions when he was dining at the Tuscany Restaurant, Mr Medich would come and sit at his

table. The Commission finds that, from early 2009, Mr Macdonald was on friendly terms with Mr Medich.

Further, the Commission finds that Mr Medich believed, prior to the first meeting (with Mr Maltabarow) on 1 June 2009, that Mr Macdonald was a political connection who would promote the interests of Rivercorp.

The Commission is satisfied that Mr Medich had a strong interest in finding work for Rivercorp and intended to make use of his connection with Mr Macdonald to drive opportunities for Rivercorp.

## Issues of credit

Both Tim Hale SC, who, together with David Mackay, appeared for Mr Macdonald, and John Bamford, Mr Medich's solicitor, submitted that Mr Gattellari was an unreliable witness. Mr Hale went so far as to say "that the Commission cannot accept any evidence that Mr Gattellari gave on any subject". The Commission does not accept this submission. At the time Mr Gattellari gave evidence before the Commission at the public inquiry, he was in custody awaiting sentence on a charge of being an accessory before the fact to murder. It was suggested at the public inquiry that he had provided information to the Commission in the hope of having his sentence reduced. Mr Gattellari did not accept that proposition; nevertheless, the Commission considers that, in all the circumstances, Mr Gattellari's evidence should be approached with caution. Mr Gattellari presented as a credible witness, however, and gave consistent and cohesive evidence. Much of his evidence is corroborated through documentary evidence and, in some cases, the testimony of independent and reliable witnesses. Mr Gattellari's evidence on various relevant issues has been assessed in this report, taking into account all of these factors.

Mr Medich was an unconvincing and inconsistent witness. As discussed above, he was determined to distance himself from any involvement in the engagement of Mr Moio to act on behalf of Rivercorp and the arrangements to pay Mr Pizzati. This was an example of a wider attempt on his part to distance himself, irrespective of the truth, from any significant relationship with Rivercorp, from Mr Macdonald, and from participation to any meaningful extent in the events surrounding the meeting that Mr Macdonald attended on 15 July 2009. Many of the inconsistencies and improbabilities in Mr Medich's evidence relate to evidence capable of connecting him to corrupt conduct. In the circumstances, Mr Medich's evidence is accepted only where it is supported by, or is consistent with, other evidence to a reasonable degree or is evidence against interest.

Counsel Assisting submitted that Mr Moio's evidence "should be generally accepted, and it should be preferred where his evidence conflicts with that of Mr Medich or

Mr Macdonald". The Commission does not accept this submission. Mr Moio was not a credible or convincing witness. Mr Moio, like Mr Medich, attempted wherever he could to distance himself from any improper conduct. He denied that he had received any payment under the agreement that he and Mr Gattellari signed and denied arranging for at least part payment of the money due to him under the agreement to be paid to Mr Pizzati, his son-in-law. There is, however, strong evidence that Mr Moio received such payments and authorised payments to be made to Mr Pizzati. Mr Moio is another witness whose evidence must be treated with caution. The Commission rejects much of his evidence. The Commission accepts some of his evidence where he has no self-interested reason to lie.

Mr Macdonald was not a witness of credit. He was often evasive and, on many occasions, his answers to the questions asked were unresponsive. Mr Macdonald was reluctant to make any concessions even in regard to matters that were relatively unimportant and where the answer obviously called for a concession. Much of Mr Macdonald's evidence, in important respects, was contradicted by other witnesses. The reason he gave for attending the Four Seasons Hotel for his assignation with Tiffanie, as discussed in chapter 4 of this report, was inherently incredible. Mr Macdonald's evidence is accepted only where it is corroborated by, or is consistent with, other reliable evidence.



## Chapter 2: Preliminary arguments

This chapter deals with a number of submissions made by Mr Hale, counsel for Mr Macdonald. Principal among these was his complaint that Mr Macdonald was prejudiced in defending himself against the allegations by reason of a failure to provide him with the particulars of the alleged corrupt conduct. For the reasons set out below, the Commission is satisfied that, during the course of the public inquiry and prior to the Commission preparing its report about the investigation, Mr Macdonald was provided with adequate notice of the particulars of the allegations made against him, the evidence in support of those allegations and how that evidence might support findings of corrupt conduct.

### Particulars of corrupt conduct provided to Mr Macdonald

At the close of oral evidence at the public inquiry, an order was made that affected persons should provide closing submissions in writing. Mr Macdonald provided three sets of closing submissions. In all of these, the argument was advanced that the findings of corrupt conduct contended by Counsel Assisting the Commission were not supported by the particulars that had been provided, and that Mr Macdonald was being denied procedural fairness. As Mr Macdonald has strenuously persisted with this argument, it is necessary for the Commission to set out in detail the particulars that were provided and make reference to the basis on which it made findings of corrupt conduct, the details of which are set out in chapter 4 of this report.

At the opening of the public inquiry, the Commissioner announced that the scope and purpose of the public inquiry was to investigate the following allegations:

1. *In 2009 Mr Medich had a substantial financial interest in Rivercorp Pty Limited, an electricity supply company. In June and July 2009 Mr Ian*

*Macdonald, the then Minister for Energy, arranged and participated in meetings at the Tuscany Restaurant between Mr Medich and the Rivercorp executive on the one hand and executive officers of EnergyAustralia and Country Energy on the other.*

2. *The meeting in June 2009, that is the first meeting, was held between Mr Medich, an unknown associate of Mr Medich and an officer of Energy Australia. The meeting in July 2009, the second meeting, was held between Mr Medich, a Rivercorp officer and officers of Country Energy.*
3. *The meetings were held so that Mr Medich and the Rivercorp executive could promote Rivercorp as a company with whom EnergyAustralia and Country Energy should enter into supply contracts.*
4. *Shortly prior to the second meeting Mr Gattellari, at the direction of Mr Medich and at the request of Mr Macdonald, arranged to provide sexual services and hotel accommodation after the second meeting to Mr Macdonald.*
5. *Mr Macdonald utilised the services and the hotel accommodation so arranged.*
6. *Mr Gattellari at the request of Mr Medich caused payment to be made for the hotel accommodation and paid for the services.*
7. *The services and accommodation were provided by Mr Medich as a reward for Mr Macdonald arranging the meetings and as an inducement to arrange similar meetings in the future.*

The factual findings made by the Commission concerning the meeting on 15 July 2009, as set out in chapter 4, fall squarely within the scope and purpose as announced at the commencement of the public inquiry. On this

ground alone, Mr Macdonald was properly informed of the allegations of corrupt conduct he would have to meet and the issues that would be raised against him.

The relevant allegations and issues were further emphasised by Counsel Assisting in opening the public inquiry. He said:

*This is a public inquiry into whether Macdonald was corrupted by Medich and the others to organise these meetings. Commissioner, he was. There is evidence that Medich rewarded Macdonald for organising these meetings and that the reward was by the provision by Medich to Macdonald of the sexual services of a young woman who was known as Tiffanie.*

Counsel Assisting said further:

*Here the corruption alleged is that Macdonald was rewarded for bringing his influence to bear over these executives, the reward was sexual services to be provided by Tiffanie. There will be some evidence that Macdonald had earlier specifically asked Moio that he be provided that night with a woman. Medich admits to knowing this. There is evidence that Gattellari, with the knowledge and support of Medich, collected and kept a group of young women available for themselves and for their guests. Moio knew this. The inference is that Macdonald also knew of the availability of these ladies.*

Again, the factual findings made by the Commission about the meeting on 15 July 2009 fall squarely within these allegations.

In his written submissions dated 9 December 2011, Counsel Assisting provided particulars of the corrupt conduct alleged on the part of Mr Macdonald. He submitted “by way of background” that:

- (a) *Mr Macdonald came to an agreement with Mr Medich that Mr Macdonald would organise meetings with any energy executives. Mr Macdonald understood that the purpose of those meetings was so that the business of the Rivercorp Group, which Mr Medich controlled, could gain the favour of introductions of executives of State-owned corporations, which could be used to promote the business of the Rivercorp Group;*
- (b) *Mr Macdonald and Mr Medich came to an agreement or understanding that Mr Macdonald would be rewarded for arranging the meetings.*

Counsel Assisting went on to provide the following particulars in respect of the 15 July 2009 meeting:

- (a) *Sometime before 15 July 2009 Mr Macdonald provided information to Mr Medich that Mr Macdonald would be present at the Tuscany Restaurant on the evening of 15 July 2009 and in the company of executives of Country Energy;*
- (b) *Mr Macdonald acted upon his agreement with Mr Medich, and introduced Mr Medich and Mr Shipley to Mr Murray and Mr Frewen, and then allowed Mr Shipley to take the opportunity to make a business presentation.*

Counsel Assisting provided the following particulars of accepting of the reward:

- (a) *Sometime before 15 July 2009 Mr Macdonald agreed with Mr Medich that he would take payment of his reward for organising the meetings, and that the reward was to be the sexual services of a woman and a hotel room in which to use those services;*

- (b) *Mr Macdonald accepted the sexual services of a woman and the supply of hotel accommodation as a reward for organising the meetings.*

By letter dated 13 January 2012 to Mr Macdonald's solicitor, the Commission stated that:

*Paragraphs 124 to 128 of Mr Macdonald's submissions appear to be made on the basis that counsel assisting's submissions that findings of corrupt conduct should be made were solely based on there being a corrupt understanding between Mr Macdonald and Mr Medich prior to 1 June 2009. The Commission regards counsel assisting's submissions as being wider than this.*

*The Commission will consider whether it is open to make a finding that Mr Macdonald entered into a corrupt arrangement with Mr Medich whereby he solicited a reward from Mr Medich in return for organising the meetings. This issue is clearly addressed in Mr Macdonald's submissions.*

*The Commission will also consider whether Mr Macdonald acted corruptly by accepting a benefit from Mr Medich on 15 July (the services of Tiffanie and free accommodation) as a reward for having arranged the meetings. Such a finding may be open even if the Commission were to conclude that there was no prior agreement between Mr Macdonald and Mr Medich for Mr Macdonald to receive a reward.*

In other words, the Commission was warning Mr Macdonald that it was considering making corrupt conduct findings against him, even in the event that it should find that there was no agreement prior to 15 July 2009, whereby Mr Macdonald would make energy executives available to Mr Medich in return for a reward. The corrupt conduct in such an event would be constituted by the actions of Mr Macdonald in soliciting or accepting a reward from Mr Medich for his role in arranging the meeting with Mr Murray and Mr Frewen.

These matters, namely, the announcement of the scope and purpose of the public inquiry, the opening by Counsel Assisting, his submissions and the particulars contained in the Commission's letter, gave full and detailed particulars of the allegations affecting Mr Macdonald and the basis on which corrupt conduct findings might be made.

It appeared from the various sets of submissions made on behalf of Mr Macdonald that, despite the submissions of Counsel Assisting and the Commission's letter of 13 January 2011, Mr Macdonald was not squarely addressing the whole of the argument that Counsel Assisting was advancing and the matters the Commission was considering. To give Mr Macdonald a further opportunity

of making a complete argument, Counsel Assisting made supplementary submissions dated 6 February 2012.

In the course of these supplementary submissions, Counsel Assisting wrote as follows:

*The general terms of the allegation of corruption involved two parts: first, that Mr Macdonald agreed with Mr Medich that he would organise meetings with executives to give Mr Medich an advantage and secondly, Mr Medich agreed with Mr Macdonald that he would reward Mr Macdonald for doing so and did so reward him.*

*Mr Macdonald's [sic] appears to have interpreted this to mean that the whole of the arrangement, right down to the nature of the reward, had been agreed before the first meeting on 1 June 2009. This is a misunderstanding of the allegation of corruption and the submissions supporting the allegation.*

*An agreement had been made by Mr Macdonald and Mr Medich before 1 June 2009, alternatively, before 15 July 2009, under which Mr Macdonald agreed to organise the meetings. The evidence to support that finding is detailed in the original submissions, and is most obviously supported by the fact of the occurrence of the meetings on 1 June 2009 and 15 July 2009.*

*As for the second part of the allegation, it is not clear precisely when an agreement was made that Mr Macdonald would be rewarded. The agreement to provide a reward was arrived at before 1 June 2009, alternatively before 15 July 2009, alternatively on 15 July 2009. At the very least Mr Macdonald intended to receive the reward before he got into Mr Medich's car to be driven to the Four Seasons Hotel.*

*To the extent that the timing of an offer to provide a reward is relevant, the evidence (for the reasons provided in the original submissions) would support this finding:*

- (a) *As to whether the agreement was arrived at before 1 June 2009, sometime before that date Mr Macdonald agreed with Mr Medich to organise the meetings with the executives of the energy authorities. While there is no direct evidence, it is probable that Mr Macdonald understood he would be rewarded for organising the meetings;*
- (b) *As to whether the agreement was arrived at before 15 July 2009, it is probable that a specific agreement had been made by Mr Macdonald and Mr Medich before 15 July 2009 that Mr Macdonald would receive a reward on the evening of 15 July 2009, and that the nature of the reward would be the sexual services of a woman. Such a finding is supported*



*by the following: Mr Medich's evidence that he understood that Mr Macdonald wanted the services of a woman; the evidence that Mr Medich asked Mr Gattellari to organise the presence of the women; the fact that Mr Gattellari organised the women to be present; the fact that the women were present on the evening; the evidence that Mr Macdonald selected Tiffanie; and the fact that Mr Macdonald wound up in the hotel room with Tiffanie;*

- (c) *As to whether the agreement was arrived [sic] on 15 July 2009, Mr Macdonald intended to receive the reward offered by Mr Medich when he entered Mr Medich's car to receive a lift to the Four Seasons Hotel.*

By these supplementary submissions, Counsel Assisting amplified the particulars previously given by him. The particulars provided by the supplementary submissions, and the allegations referred to therein, did not detract from any particulars previously given. By reason of the foregoing, Mr Macdonald was given full and detailed particulars of the corrupt conduct findings available to be made by the Commission.

## **The argument that it is necessary to find a “corrupt two part” agreement**

Mr Hale argued, in effect, that there has to be evidence that establishes the existence of a contract. That is not correct. To the extent that an “agreement” is an essential element of corrupt conduct, what is required is merely a consensus or understanding that particular corrupt acts will be performed. That consensus or understanding was established by proof of the following. First, that Mr Macdonald agreed with Mr Medich that he, Mr Macdonald, would arrange for Mr Medich to meet executives from state-owned energy corporations. Secondly, the conduct of Mr Macdonald in making such arrangements. Thirdly, Mr Macdonald's request for sexual services, implicitly as a reward for arranging the meetings. Fourthly, by Mr Medich arranging for such sexual services to be provided. Fifthly, by Mr Macdonald accepting those services.

Mr Hale also contended in effect that, in accordance with the particulars provided to Mr Macdonald, for corrupt conduct to be established there had to be evidence (accepted by the Commission) that the agreement by which Mr Macdonald provided favours to Mr Medich, and Mr Medich arranged the provision of sexual favours to Mr Macdonald comprised agreements that were entered into on two separate occasions. That is to say, on each of

these two occasions a separate and independent part of the agreement was concluded.

The so-called corrupt two part agreement is said to be, first, an agreement between Mr Macdonald and Mr Medich to show favour to Mr Medich and, secondly, to reward Mr Macdonald with the sexual services of a woman.

It is correct that at one point Counsel Assisting stated that, “[t]he general terms of the allegation of corruption involved two parts”. He did not, however, refer to a “two part agreement”. He submitted that the first part of the alleged corruption involved the agreement whereby Mr Macdonald agreed to arrange meetings with energy executives. He submitted that the second part involved Mr Medich agreeing with Mr Macdonald that he would reward Mr Macdonald by providing him with the sexual services of a woman, which Mr Medich in fact did.

Counsel Assisting, however, also made it plain that he was submitting in the alternative that the agreement to provide Mr Macdonald with the reward of sexual favours “was arrived at before 1 June 2009, alternatively before 15 July 2009, alternatively on 15 July 2009”. Further, the Commission, itself, stated in its letter of 13 January 2012 that the Commission would consider whether Mr Macdonald acted corruptly by accepting the benefit of the services of Tiffanie and free accommodation, even if there had been no prior agreement between Mr Macdonald and Mr Medich.

Mr Hale's arguments in this regard are not accepted.

## **The argument based on inadequate particulars**

Mr Hale further contended that particulars were missing as to:

- when the alleged agreement took place (other than before 1 June or before 15 July 2009 – which particulars were provided, as stated above) or
- where it took place, and
- when the opportunity to reach such an agreement might have arisen.

Mr Hale submitted that, “this lack of identification in the particulars deprives Mr Macdonald of the opportunity of establishing by evidence that he did not meet with, or speak to, Mr Medich on the particularised occasions”. Mr Hale argued that, “in failing to identify the occasions and give proper particulars of the agreement, Mr Macdonald is unable to raise specific defences to the allegations”. The Commission rejects this submission.

An agreement can be proved without the need for particulars as to when, or in what circumstances, the agreement was reached (see for example, Heydon J in *Brambles Holdings Ltd v Bathurst City Council* (2001) 53 NSWLR 153). What is required is to establish the facts from which an agreement may be inferred, that is to say, that mutual assent has been manifested. When this is the basis on which the agreement is sought to be proved it will often not be possible to give particulars as to when and where the agreement was arrived at. It is then sufficient for the relevant party to be apprised of the circumstances from which it is said that the agreement is to be inferred.

Mr Macdonald was apprised of such circumstances by the stated scope of the public inquiry and Counsel Assisting's opening and the further particulars provided during the course of submissions, as stated above.

All the evidence tending to establish corrupt conduct on the part of Mr Macdonald as found by the Commission was the subject of cross examination by Mr Hale. It is beyond belief that Mr Macdonald and his legal advisors did not fully appreciate that this evidence was capable of giving rise to the inference that an agreement or agreements as alleged had been arrived at and that proof of such agreement or agreements was one of the purposes for the adducing of such evidence. It is difficult to understand what other reason Mr Hale had for cross examining on these issues.

The submissions made on Mr Macdonald's behalf repeatedly make reference to a statement of Dawson J in *S v The Queen* (1989) 168 CLR 266 at 275 where his Honour said:

*"The occasions upon which the offences alleged took place were unidentified and the applicant was, in effect, reduced to a general denial in pleading his defence. He was precluded from raising more specific, and therefore, more effective defences, such as the defence of alibi. Because the occasions on which he was alleged to have committed the offences charged were unspecified, he was unable to know how he might have answered them had they been specified. It is not to the point that the prosecution may have found it difficult or even impossible to make an election because of the generally unsatisfactory evidence of the complainant. An accused is not to be prejudiced in his defence by the inability of the prosecution to observe the rules of procedural fairness."*

*S v The Queen* involves the question of the sufficiency of particulars that the prosecution must provide to ensure that an accused person is not prejudiced in presenting a defence at a criminal trial. It therefore can have little or no relevance to the issue of the provision of sufficient particulars to

provide procedural fairness in an inquisitorial, as opposed to adversarial, proceeding. In any case, the situation in *S v The Queen* was entirely different from the present.

In *S v The Queen*, the accused was convicted on three counts of carnal knowledge of his daughter. The three counts each charged one act of carnal knowledge on a date unknown within a specified period of 12 months. At the trial, the daughter gave evidence of two specified acts of sexual intercourse; however, there was no evidence to link either act to any one of the specified periods. According to the daughter, the sexual intercourse occurred over a period of two years and she could not remember detail or frequencies other than that it occurred "every couple of months for a year". The latent ambiguity in that case arose because the evidence disclosed a number of offences during each of the relevant years, any one of which fell within the description of the relevant count.

As Dawson J pointed out, there was an "obvious embarrassment to the applicant in having to defend himself on an indeterminate number of occasions, unspecified in all but two instances, any one of which might, if it occurred in one of the relevant years, constitute one of the offences charged. There was the additional embarrassment that the years in the second and third counts overlapped so that if an occasion fell within the overlapping period it was not possible to determine whether it was an offence charged by count 2 or count 3".

Thus, the applicant in *S v The Queen* was reduced to a general denial in pleading his defence; he was precluded from raising more specific defences such as the defence of alibi. He was unable to know how he might have answered the charges had they been specified.

None of the above factors applies in the present case. Here, the question is simply whether there was an agreement or agreements between Mr Macdonald and Mr Medich at the times alleged (before 1 June 2009, alternatively before 15 July 2009, alternatively on 15 July 2009) and in the terms alleged. No question of an alibi or similar defence arises. Mr Macdonald was not placed under any embarrassment in mounting his defence. The Commission repeats that it was made obvious what facts were relevant to whether such an agreement or agreements existed by the scope of the public inquiry, the opening of Counsel Assisting, and the particulars provided. The Commission repeats that Mr Hale challenged the evidence relevant to these issues, thereby demonstrating that he knew full well and properly understood what case he had to meet. The first time that Mr Hale asserted that he was embarrassed by lack of particularity was in his closing written submissions. He had, therefore, conducted his questioning of the witnesses without the need to advance any complaint as to inability to understand what was being alleged against Mr Macdonald.

## The argument based on the proposition that “no questions were asked about the alleged corrupt agreement”

It was submitted on behalf of Mr Macdonald that, “Counsel Assisting did not explore such a possible meeting about an agreement in relation to organising meetings or obtaining a reward in cross examination with either Mr Macdonald or Mr Medich nor was any question ever put to Mr Macdonald, or indeed Mr Medich, about such an agreement or understanding”.

In the Commission’s view, it was not necessary to put to Mr Macdonald or Mr Medich mechanically that they had entered into a corrupt agreement or understanding. It was made plain by the statement as to the scope of the public inquiry and by Counsel Assisting’s opening that the Commission was investigating whether Mr Macdonald had corruptly arranged for the Country Energy executives to meet Mr Medich and whether Mr Medich corruptly rewarded Mr Macdonald for providing those services by, in turn, providing the sexual services of Tiffanie and hotel accommodation to him. In his questioning of Mr Macdonald, Mr Medich and all the other relevant witnesses, Mr Hale had ample opportunity to deal with these issues and, indeed, did so.

There are other matters that are relevant to this issue.

Mr Hale’s submissions of 23 February 2012 to the Commission drew attention to the fact that in relation to the 15 July 2009 meeting, Mr Macdonald was asked about informing Mr Medich that the executives of Country Energy would be there and was asked if he had arranged the business presentation at the Tuscany Restaurant. As Mr Hale notes, Counsel Assisting asked Mr Macdonald the following question:

*Counsel Assisting: Really and truly Mr Macdonald, the truth is what you’re saying is nonsense. And you knew full well and had set up the opportunity for this business presentation to be made hadn’t you? Mr Macdonald replied, “Absolutely incorrect.”*

This reply meant that there was no point in putting to Mr Macdonald that he had agreed with Mr Medich to provide the opportunity to meet these men. Once Mr Macdonald asserted that it was absolutely incorrect that Mr Medich knew about the meeting it was pointless putting to him that he had agreed with Mr Medich to provide the opportunity to promote Rivercorp to Mr Murray and Mr Frewen.

Counsel Assisting asked Mr Macdonald whether he took the sexual services of Tiffanie from Mr Medich as a reward

for introducing him to Mr Maltabarow, Mr Murray and Mr Frewen. Mr Macdonald replied, “Completely wrong”.

Given Mr Macdonald’s denial, there was no point in putting to him that he had agreed with Mr Medich that he would be given such a reward and that he would accept such a reward.

As regards Mr Medich, his testimony was that it was his understanding that the occasion on 15 July “was a planned meeting of [Macdonald’s] own”. It was then put to Mr Medich by Counsel Assisting, “Is it true or not you through Macdonald were twice able to sit at his table at the Tuscany Restaurant while executives from State-owned corporations in the field of energy were also present at the table? That’s true isn’t it?”. Mr Medich answered, “they were there...”.

On a number of occasions, Counsel Assisting proceeded to put to Mr Medich that, through Mr Macdonald, he was able to put representations to the Country Energy executives at the Tuscany Restaurant. Mr Medich did not answer the questions directly.

Mr Medich was asked whether he thought that Mr Macdonald might try to help him in other matters because of all the things he, Mr Medich, had done for him. Mr Medich replied, “I knew of no matter that he can help me in and I never asked for any help”. This, in effect, was a denial of the agreement or the agreements or understandings alleged. That, indeed, was the tenor of Mr Medich’s evidence as a whole.

Counsel Assisting asked Mr Medich whether he did “these things” for Mr Macdonald “to reward him for the introductions to the Country Energy Executives and too, for the introduction to George Maltabarow”. Mr Medich replied, “No I did not”.

Counsel Assisting asked Mr Medich, “after being given these opportunities to sit with the minister for energy or with executives of state-owned corporations you, Mr Medich, were instrumental in arranging the minister for energy to receive the services of a young woman were you?”. Mr Medich replied, “No, I don’t agree with that”.

It is not without relevance that Mr Medich, who, for all practical purposes, faced allegations against him that were in many material respects similar to those made against Mr Macdonald, makes no complaint of procedural unfairness.

In the circumstances, the Commission rejects the suggestion that there was any procedural unfairness because “no questions were asked about the alleged corrupt agreements”.

## Chapter 3: The meeting at the Tuscany Restaurant on 1 June 2009

This chapter examines the allegation that Mr Macdonald arranged a meeting with Mr Maltabarow, managing director of EnergyAustralia, and Mr Medich at the Tuscany Restaurant on 1 June 2009 so that Mr Medich could promote Rivercorp to Mr Maltabarow as a company with whom EnergyAustralia should enter into supply contracts.

There is no dispute that:

- Mr Macdonald invited Mr Maltabarow to dinner at the Tuscany Restaurant on 1 June 2009
- Mr Medich, who was present at the restaurant that night, came to their table and was introduced to Mr Maltabarow by Mr Macdonald
- Mr Macdonald left the table, leaving Mr Maltabarow alone with Mr Medich.

Mr Maltabarow said that, while Mr Macdonald was absent from the table, Mr Medich spoke to him about his interest in “doing some sort of business with EnergyAustralia”. Mr Medich denied this. His evidence is rejected for the reasons set out in this chapter. The central issue for the Commission’s determination is whether Mr Macdonald arranged the meeting for the benefit of Mr Medich. For the reasons set out below, the Commission is not satisfied that there is sufficient evidence to find that he did so.

### Mr Macdonald arranges a meeting with Mr Maltabarow

Mr Maltabarow was the managing director of EnergyAustralia. Mr Macdonald was the minister for energy. EnergyAustralia was a state-owned corporation under the *State Owned Corporations Act 1989*. As minister for energy, Mr Macdonald was the “portfolio minister” for EnergyAustralia. The portfolio minister has a limited role in connection with a state-owned corporation and does not

influence its commercial operations. The portfolio minister, however, has the duty to administer the foundation charter of a state-owned corporation.

Shortly before 1 June 2009, Mr Macdonald, through his private secretary, invited Mr Maltabarow to join him for dinner at the Tuscany Restaurant on 1 June 2009. There was no dispute that Mr Maltabarow was invited to dine alone with Mr Macdonald. Mr Maltabarow was asked the following questions by Counsel Assisting about the invitation he received from Mr Macdonald:

*[Counsel Assisting]: Was an invitation of that kind in your experience before and since, a typical, a common or usual kind of invitation?*

*[Mr Maltabarow]: I wouldn't say it was typical but I wouldn't have regarded an invitation as being particularly unusual.*

*[Q]: Well let's put it this way – had any minister on an earlier occasion before this night at the Tuscany or since this night at the Tuscany ever made a similar kind of invitation that he or she dine with you alone at a restaurant?*

*[A]: No.*


*[Q]: So it's unusual in that sense?*

*[A]: Yes.*

*[Q]: In fact it's unique in your experience?*

*[A]: In my experience it's unique.*





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Mr Hale submitted that it appeared that Mr Maltabarow did not regard Mr Macdonald's invitation to have dinner, alone or otherwise, as unusual and that he was led by Counsel Assisting into agreeing with the proposition that it was "unique". Mr Hale submitted that much of the evidence at the public inquiry was led by Counsel Assisting in this way and it detracted from its weight.

Mr Maltabarow made it clear that Mr Macdonald's invitation represented the only occasion when he had been invited to dine alone with a minister at a restaurant. It is, therefore, unsurprising that Mr Maltabarow agreed with the proposition that Mr Macdonald's invitation was "unique".

Some of Counsel Assisting's questions were leading. But Mr Maltabarow, of his own volition, accepted that the particular kind of invitation that Mr Macdonald extended to him was "unique". There is nothing to suggest that he was improperly or unfairly led or pressured into giving that evidence.

As regards Mr Hale's general submission, the Commission has had regard to the way and circumstances in which the evidence of particular witnesses was adduced and, generally, has attributed what it regards as the appropriate weight to each piece of evidence given in response to leading questions.

Mr Macdonald said he arranged the meeting with Mr Maltabarow for the purpose of discussing a number of issues that were relevant to the energy portfolio. Mr Maltabarow said that they discussed government assistance for a demonstration program and fundraising for the Sydney Symphony Orchestra. Mr Maltabarow acknowledged, however, that he and Mr Macdonald may also have had a conversation about energy-related matters.


## The meeting

The meeting was clearly an informal one. Mr Macdonald did not provide Mr Maltabarow with an agenda prior to the meeting. No notes were taken of the meeting and no particular decision was made or action taken as a result of the matters discussed at the meeting. In the Commission's view, the meeting did not have a clear business focus.

Mr Medich was sitting at a separate table. He said that he did not know that Mr Macdonald and Mr Maltabarow were dining at the restaurant that night. According to Mr Medich, Mr Moio told him that executives from EnergyAustralia were sitting at Mr Macdonald's table and encouraged him to join them. Mr Moio denied this. It is unnecessary to resolve this dispute. The fact is that Mr Medich went to their table and he was introduced to Mr Maltabarow by Mr Macdonald. Mr Maltabarow had never met Mr Medich before.

Shortly after introducing Mr Maltabarow to Mr Medich, Mr Macdonald left the table without explanation. Mr Macdonald suggested that he may have left to make a telephone call. Mr Maltabarow said he was irritated that he was left in the company of Mr Medich. Mr Macdonald was absent from the table for around 10 minutes. Mr Maltabarow said that, during Mr Macdonald's absence, Mr Medich generally discussed his interest in supplying services to EnergyAustralia. Mr Hale submitted, and the Commission accepts, that Mr Maltabarow was a truthful witness. The Commission accepts his evidence.

Mr Medich denied engaging in any such discussion with Mr Maltabarow. He said that at the time he met Mr Maltabarow, he was unaware that EnergyAustralia was a potential client of Rivercorp. Mr Medich's evidence about this was unconvincing and the Commission rejects it. For the reasons already stated, the Commission is satisfied that, at the time of this meeting, Mr Medich possessed a keen interest in securing work for Rivercorp.



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Mr Maltabarow agreed that he would have refused a request by Mr Medich for a meeting if he had known that Mr Medich intended to use it to promote his interests in securing contracts with EnergyAustralia. Mr Maltabarow said that to accept an invitation in such circumstances afforded a potential supplier preferential treatment. The Commission is satisfied that Mr Medich was provided with an opportunity to promote Rivercorp to a senior energy executive that would not have arisen had he contacted Mr Maltabarow directly.

Mr Macdonald denied arranging the meeting with Mr Maltabarow for that purpose. In the Commission's view, however, Mr Macdonald's action in inviting Mr Maltabarow to dinner, alone, at the Tuscany Restaurant in the absence of any clear business-related reason for doing so, Mr Medich's presence at the restaurant on the night of the meeting, his action in joining Mr Macdonald at his table and, after Mr Macdonald left him alone with Mr Maltabarow, his action in discussing his interest in supplying services to EnergyAustralia, are circumstances which, when considered in combination, arouse considerable suspicion that Mr Macdonald arranged the meeting with Mr Maltabarow for Mr Medich's benefit.

The Commission notes, however, that Mr Medich occupied business premises in close proximity to the Tuscany Restaurant and was a regular diner at the restaurant. This circumstance is capable of explaining his presence at the restaurant on the evening of 1 June 2009 and, if so, his attendance upon Mr Maltabarow may have been opportunistic. In the Commission's view, in the absence of further evidence capable of demonstrating that Mr Medich knew that Mr Maltabarow and Mr Macdonald would be dining at the restaurant that night, there is insufficient evidence to find that Mr Macdonald arranged his meeting with Mr Maltabarow for the purpose of providing Mr Medich with the benefit aforementioned.

The Commission is satisfied, however, that by the end of the meeting with Mr Maltabarow it was apparent to Mr Medich that, by Mr Macdonald arranging future meetings with energy executives, further opportunities could be created for him to promote Rivercorp to those executives. For the reasons discussed in the following chapter, the Commission is also satisfied that this possibility was operating on Mr Macdonald's mind when he arranged the second meeting at the Tuscany Restaurant on 15 July 2009 with Mr Murray, managing director of Country Energy.

## Chapter 4: The meeting at the Tuscany Restaurant on 15 July 2009

This chapter examines allegations that:

- Mr Macdonald arranged a meeting between Mr Medich and Mr Murray, managing director of Country Energy, on 15 July 2009 for the purpose of allowing Mr Medich to promote his business interests to Mr Murray
- shortly prior to this meeting, Mr Gattellari, at the direction of Mr Medich in response to a request made by Mr Macdonald, arranged to provide sexual services to Mr Macdonald
- Mr Macdonald utilised the services of a woman and hotel accommodation
- the services and hotel accommodation were provided to Mr Macdonald, and accepted by him as a reward, for having arranged the meeting involving Mr Murray and Mr Medich.

### A brief summary of the events that occurred on the night of 15 July 2009

Before dealing in detail with the evidence relating to the meeting on 15 July 2009, it is convenient to set out briefly the events that led up to the meeting and what occurred at the meeting.

On or shortly before 13 July 2009, Mr Macdonald caused arrangements to be made for a meeting between himself and Mr Murray at the Tuscany Restaurant on 15 July 2009. Country Energy's main business concerned the maintenance of the energy network infrastructure in rural NSW. At the relevant time, Country Energy was a statutory state-owned corporation. Mr Macdonald was the minister for energy and, as such, the portfolio minister of Country Energy.

Mr Murray decided to take Mr Frewen, Country Energy's executive general manager of customer and corporate affairs, to the meeting. At around 7.00 pm on 15 July 2009, Mr Murray and Mr Frewen met Mr Macdonald at the Tuscany Restaurant and all three of them sat together at a table.

Mr Medich, Mr Shipley (CEO of Rivercorp), Mr Gattellari, Annie (Mr Gattellari's girlfriend), and Mr Kaminic (Mr Gattellari's friend and business associate), were also present at the restaurant that night and seated at Mr Gattellari's table. Mr Gattellari also invited Tiffanie to the restaurant. Tiffanie had previously provided sexual services to men at Mr Gattellari's request and had received payment from him for doing so. Tiffanie, at Mr Gattellari's request, invited "Cindy", her friend, to the restaurant. Tiffanie and Cindy also sat at Mr Gattellari's table.

At around 7.30 pm, Mr Medich left Mr Gattellari's table to join Mr Macdonald's table. Mr Macdonald introduced Mr Medich to Mr Murray and Mr Frewen, and Mr Medich took a seat at the table. Mr Shipley followed Mr Medich to Mr Macdonald's table shortly thereafter and Mr Medich introduced him to those present. Mr Medich and Mr Shipley, in the presence of Mr Macdonald and without any opposition from him, spoke to Mr Murray and Mr Frewen about Rivercorp's capacity to provide electrical services to Country Energy. Mr Shipley complained to Mr Murray and Mr Frewen about the inability of Rivercorp to secure work through the tender process. Mr Murray and Mr Frewen had not met Mr Medich or Mr Shipley prior to that evening.

At around 9.45 pm, Mr Murray and Mr Frewen left the restaurant. A short while later, Mr Gattellari, at Mr Medich's request, told Mr Kaminic to drive Tiffanie to the Four Seasons Hotel at Circular Quay. Tiffanie and Mr Kaminic arrived at the hotel around 10.30 pm. Mr Kaminic booked and paid for a room in his name using



money provided to him by Mr Gattellari. Mr Kaminic then escorted Tiffanie to the room before returning to the hotel reception, where he waited for Mr Medich.

Later that night, Mr Medich drove Mr Macdonald to the Four Seasons Hotel. When Mr Medich entered the hotel, Mr Kaminic gave him the key to the room in which Tiffanie was waiting. Mr Medich, in turn, gave the key to Mr Macdonald. Mr Medich left the hotel in the company of Mr Kaminic. Mr Macdonald then went to the room where Tiffanie was waiting.

Mr Macdonald said that he went to the hotel for the purpose of receiving a remedial massage. He said that he entered the room, laid down on the bed and fell asleep. He said that he was intoxicated at the time. Tiffanie said that she waited until a man (there was no dispute that the man was Mr Macdonald) entered the room. She said that she took off her clothing except her underwear and lay on the bed. Tiffanie said that the man lay down on the bed beside her and kissed her. She said that they did not have sexual intercourse.

Mr Macdonald and Tiffanie remained in the room until around 3.00 am. They left the hotel separately. Mr Macdonald did not dispute that he accepted the hotel accommodation and the services provided by Tiffanie without paying for them.

## The circumstances leading to Mr Medich, Mr Gattellari and Mr Shipley attending the Tuscany Restaurant on 15 July 2009

Mr Medich said that Mr Moio told him during lunch at the Tuscany Restaurant on 13 July 2009 that Mr Macdonald and Country Energy executives would be dining at the Tuscany Restaurant on the evening of 15 July 2009. Mr Medich also said that Mr Moio told him that Mr Macdonald wanted a “girl” following the meeting and that Mr Moio asked him, Mr Medich, to speak to Mr Gattellari to make those arrangements.

Mr Medich denied, however, that Mr Moio told him about the meeting that was to take place on 15 July 2009 because Mr Moio was being paid to find work for Rivercorp. By doing so, Mr Medich sought to convince the Commission that his presence at the restaurant on 15 July 2009 was unconnected with his interest in promoting Rivercorp. Mr Medich unconvincingly maintained this denial even after his attention was drawn to the following evidence he gave about this issue during the first of two compulsory examinations conducted prior to the Commission’s public inquiry:

*[Counsel Assisting]: Do you know why they were there?*

*[Mr Medich]: I believe that Frank Moio knew that they were going to be there that night, because...*

*[Q]: How did you find that out?*

*[A]: Because Frank Moio told me, you know.*

*[Q]: What did he say to you?*

*[A]: He just said he believed that the Country Energy blokes were going to be there that night. Remember, he was the one that was supposed to be going out getting jobs and whatever. He was contracted, you know, by the electrical companies.*

By this evidence, Mr Medich indicated that he believed that Mr Moio told him about the meeting on 15 July 2009 because Mr Moio had agreed to find work for Rivercorp. It is also to be inferred from this evidence that Mr Medich believed that the meeting represented a business opportunity for Rivercorp that he could exploit.

At the public inquiry, however, Mr Medich denied this was so and suggested that Mr Moio told him about the meeting on 15 July 2009 in the context of asking him to arrange a “girl” for Mr Macdonald at the conclusion of the meeting. Mr Medich went as far as to say that his attendance at the Tuscany Restaurant on the evening of 15 July 2009 had no connection with the fact that Country Energy executives and Mr Macdonald would also be dining at the restaurant. He said that, on the evening of 15 July 2009, he reluctantly attended the Tuscany Restaurant at Mr Gattellari’s request. Mr Medich stated that it was not until he arrived at the restaurant that Mr Gattellari explained that he wanted him there as part of Mr Gattellari’s plan to make a woman available to Mr Macdonald later that night. Mr Medich said that Mr Gattellari told him that, “Kim Shipley will be coming down and you will be down there because you’ve got to make out that you’ve [sic] have a presentation with these Country Energy guys”. He said that the “presentation” that he and Mr Shipley delivered to Mr Murray and Mr Frewen was really a “charade”. By “charade” Mr Medich meant cover for the fact that “there was a girl” and that she was “going to a hotel”. The “girl” was a reference by Mr Medich to the woman Mr Macdonald had asked Mr Moio to arrange for him after the meeting.

There are a number of difficulties with Mr Medich's altered version. He did not explain, and it is not apparent to the Commission, that, if the presentation he and Mr Shipley gave to the energy executives were merely a charade, why that charade had to take place before Mr Macdonald could have an assignation with a woman in a hotel room. Neither Mr Gattellari nor Mr Shipley gave any indication that the presentation to Mr Murray and Mr Frewen was a charade. Mr Terracini, senior counsel for Mr Medich, did not suggest such a proposition to them. The Commission concludes that Mr Medich's evidence about a charade is an invention with which he persisted as a means of distancing himself from the events of 15 July 2009. His explanation for engaging in the presentation to Mr Murray and Mr Frewen is fanciful, and the Commission rejects it.

In the Commission's view, the evidence that Mr Medich originally gave at the compulsory examination was the truth. That is, he believed that on 13 July 2009 Mr Moio told him that Mr Macdonald had arranged for Country Energy executives to be present on 15 July 2009 at the Tuscany Restaurant so that Mr Medich could meet them to promote the business interests of Rivercorp. Evidence to this effect was given before Mr Medich appeared to have realised its implications. Once he appreciated that this evidence potentially involved him in corrupt conduct on the part of Mr Macdonald, Mr Medich changed his evidence.

Mr Moio denied telling Mr Medich that Mr Macdonald had arranged to meet with a Country Energy executive at the Tuscany Restaurant on 15 July 2009.

The Commission rejects Mr Moio's evidence that he did not tell Mr Medich about the meeting. Mr Moio, generally, did not present as a reliable witness. He, like Mr Medich, appeared very anxious to give evidence that would have the effect of removing himself from any involvement in what occurred at his restaurant on 15 July 2009. In the Commission's view, Mr Medich had no motive to lie about this aspect of his conversation with Mr Moio. It seemed to the Commission that when Mr Medich gave this evidence, he did so candidly and honestly. As has been mentioned, it was only when Mr Medich realised the import of his initial evidence about this conversation that he suggested that his presence at the restaurant was unconnected with the fact that he knew Mr Macdonald and Country Energy executives also would be there.

The important question arises: how did Mr Moio become aware of the fact that a Country Energy executive was coming to the restaurant on 15 July 2009? Mr Macdonald admitted that during a telephone conversation with Mr Moio he may have told Mr Moio that a Country Energy executive would be coming with him to the restaurant. Mr Hale submitted that Selina Williams, Mr Macdonald's private secretary, and not Mr Macdonald may have

provided Mr Moio with information about the identity of Mr Macdonald's guests in the course of booking the restaurant on behalf of Mr Macdonald. The Commission rejects this submission. Ms Williams said that she had no recollection of events relating to the Country Energy booking. In the Commission's view, had Ms Williams spoken to Mr Moio about the booking, there is no reason why she would have identified Mr Macdonald's guests by reference to their position at Country Energy unless instructed to do so by Mr Macdonald.

The Commission is satisfied that Mr Macdonald told Mr Moio on or before 13 July 2009 about his intention to meet with Mr Murray at the restaurant on 15 July 2009.

Mr Gattellari said that Mr Medich told him about the meeting that was to take place at the Tuscany Restaurant on 15 July 2009. He said that he and Mr Medich agreed that Mr Shipley should attend the meeting to "put forward our proposal" to the Country Energy executives that "we needed some large electrical contracts". Mr Shipley said, and the Commission accepts, that he received a telephone call from Mr Gattellari, who told him that he was needed for a meeting that night with "Country Energy at the Tuscany Restaurant".

Mr Medich denied telling Mr Gattellari about the meeting or having any involvement in the decision to invite Mr Shipley to the meeting. In the Commission's view, this again was part of the wider attempt on Mr Medich's part to distance himself from any involvement in the events of 15 July 2009. The Commission finds Mr Medich's evidence about these matters to be unconvincing.

Mr Bamford, Mr Medich's solicitor, submitted that the Commission should not accept Mr Gattellari's evidence about the meeting as he was determined to implicate Mr Medich falsely as the "mastermind" behind the events that occurred on the evening of 15 July 2009. Mr Bamford noted that Mr Gattellari gave evidence that Mr Medich told him that he, Mr Medich, had organised "for some high officials from Country Energy to attend a dinner at Tuscany so that himself [sic] and Kim Shipley could discuss possible contracts that would be obtained". Mr Bamford submitted that this evidence was plainly false as Mr Medich had no influence over Mr Murray or Mr Frewen and was in no position to arrange their attendance at the Tuscany Restaurant. Mr Medich's statement to Mr Gattellari, however, is readily explicable by him wanting to claim credit for arranging the meeting through Mr Macdonald and to display the strength of his connection with Mr Macdonald. The Commission accepts Mr Gattellari's evidence as to what he was told by Mr Medich. Mr Gattellari's testimony is supported by the following evidence.

Mr Shipley said that he, Mr Medich and Mr Gattellari had, prior to the meeting on 15 July 2009, identified Country Energy as a potential source of work for Rivercorp. He said that for some time they had been trying to arrange some “sort of meeting” with Country Energy (and other organisations) in order to foster business relationships favourable to Rivercorp. Mr Bamford submitted that the Commission should reject Mr Shipley’s evidence that Mr Medich was interested in securing work from Country Energy as it was “inconsistent with the fact that Medich had no knowledge of the electrical industry compared to the self-professed knowledge and experience of Mr Shipley”.

The Commission rejects this submission. Mr Medich’s lack of knowledge about the electrical industry did not preclude him from being vitally interested in attempting to obtain work from Country Energy for Rivercorp. Furthermore, Mr Medich, in effect, was Mr Shipley’s boss and the Commission is of the view that, having regard to Mr Medich’s personality as evinced in the witness box, he would want to be involved in attempting to persuade the Country Energy officials to regard Rivercorp in a favourable light and, moreover, would regard himself as being well able to influence those officials, were he to be given an opportunity to do so. Such conduct was consistent with his earlier attempt to influence Mr Maltabarow.

Mr Shipley’s evidence is supported by an email he sent on 19 June 2009 to Mr Rowe, Mr Gattellari, Mr Medich and another Rivercorp executive officer. In the email, Mr Shipley provided advice about the progress of negotiations concerning the proposed acquisition of a company known as Project Electrical Services. Mr Shipley noted that the offer he had made for the acquisition was based “on current opportunities particularly the Country Energy opportunity and other tenders that have been submitted”. There was no evidence led at the public inquiry as to whether Mr Medich read this email. Mr Shipley said, however, that he understood that Mr Medich’s secretary left printed copies of emails he sent to Mr Medich on Mr Medich’s desk. Mr Medich acknowledged that Mr Shipley sent him emails. Furthermore, Mr Rowe said that Mr Shipley needed funding from Mr Medich to finance the acquisition of Project Electrical Services. According to Mr Gattellari, Mr Medich was always consulted if Rivercorp needed funds to acquire another company.

In the light of Mr Shipley’s evidence and the supporting evidence referred to above, the Commission is satisfied that Mr Medich, Mr Gattellari and Mr Shipley shared a common interest in finding work for Rivercorp and regarded Country Energy, in particular, as a potential source of that work. The fact that Mr Medich was motivated to obtain work for Rivercorp from Country Energy lends support to Mr Gattellari’s evidence that Mr Medich told him about the meeting and agreed with him about the need to secure

Mr Shipley’s attendance at the meeting for the purpose of promoting Rivercorp to the energy executives expected to be in attendance.

Mr Medich’s conduct during his meeting with Mr Murray and Mr Frewen sheds further light on his reason for attending the Tuscany Restaurant on the evening of 15 July 2009.

Mr Murray said that, after Mr Medich and Mr Shipley joined their table, it became apparent through general conversation that they were involved in some sort of “manufacturing business that related to the network part of, of Country Energy’s business”. Mr Murray said they “made the point that they had never been able to secure any work from Country Energy through the tender process”. Mr Murray said the conversation concerned “why they weren’t getting any business from Country Energy” and “how could they address that”. Mr Frewen said the conversation concerned how “they had been unsuccessful in supplying something to Country Energy and that clearly was a concern to them”. Mr Murray and Mr Frewen said they felt uncomfortable about the direction in which Mr Medich and Mr Shipley had taken the conversation.

The Commission is satisfied that Mr Murray and Mr Frewen gave accurate evidence about the conversation with Mr Medich and Mr Shipley. Their account is consistent with Mr Shipley’s evidence about the meeting. He said, and the Commission accepts, that the meeting represented an opportunity to develop a business relationship with senior Country Energy officials. He said he saw this as an advantage in the context of tendering for work from Country Energy. Mr Shipley said that he spoke to Mr Murray and Mr Frewen about the kind of services Rivercorp could supply to Country Energy. He said that he provided them with a copy of a corporate profile that included information about the work that the electrical companies had previously carried out. In the Commission’s view, the evidence of Mr Murray, Mr Frewen and Mr Shipley establishes that Mr Medich and Mr Shipley actively promoted Rivercorp to Mr Murray and Mr Frewen, and supports an inference that Mr Medich and Mr Shipley attended the restaurant that night for that purpose.

Mr Macdonald’s evidence on this issue, which, in summary, was a denial that he had arranged for Mr Medich to meet Mr Murray and Mr Frewen, and a denial that he had requested the sexual services, is dealt with in the next section.

The Commission is satisfied that Mr Medich and Mr Gattellari attended the Tuscany Restaurant on the evening of 15 July 2009 because they knew that, by reason of the arrangements made by Mr Macdonald, which had been

communicated to Mr Medich by Mr Moio, they would have an opportunity to promote the services of Rivercorp to a Country Energy executive. The Commission is also satisfied that, prior to the meeting, Mr Medich agreed with Mr Gattellari that Mr Shipley should be in attendance at the meeting so as to participate in the promotion of Rivercorp. Mr Gattellari, with Mr Medich's knowledge and approval, invited Mr Shipley to the restaurant for that purpose.

### **Mr Macdonald's conduct prior to, and during, the meeting at the Tuscany Restaurant on 15 July 2009**

It was not disputed that Mr Macdonald caused arrangements to be made for a meeting between himself and Mr Murray at the Tuscany Restaurant on 15 July 2009. The Commission is satisfied that the meeting was not intended by Mr Macdonald to be a private meeting and that, by requiring Mr Murray to meet with him at the Tuscany Restaurant, Mr Macdonald was exercising the influence he possessed by reason of his holding the office of minister for energy.

Mr Macdonald denied that he had arranged the meeting for the purpose of providing Mr Medich with an opportunity to promote his interests in the electrical company to Mr Murray. The Commission rejects his evidence. The Commission is satisfied that the following series of facts and circumstances, when taken together, establish that Mr Macdonald arranged the meeting for that very purpose.

Mr Murray said that when he was told of Mr Macdonald's request for a meeting he instructed Janene Harwood, his private secretary, to make a reservation at a restaurant in close proximity to Parliament House. Mr Macdonald, however, changed the venue of the meeting to the Tuscany Restaurant at Leichhardt. He said he did so because he preferred the Tuscany Restaurant to the restaurant selected by Mr Murray. It is noteworthy that Mr Medich was a habitu   of the Tuscany Restaurant, a fact well known to Mr Macdonald when he chose the venue.

Ms Harwood said that Ms Williams, Mr Macdonald's private secretary, told her, during the course of making arrangements for the meeting, that it was not necessary for Mr Murray to bring anyone with him to the meeting. Ms Williams said she had no recollection of events surrounding Mr Macdonald's meeting with Mr Murray. Mr Macdonald denied causing Mr Murray to be advised that he was to attend the meeting alone. The Commission rejects his evidence. Ms Harwood's evidence is supported by Mr Murray. He said that Ms Harwood told him that

Mr Macdonald had requested a "one-on-one" meeting with him. Both he and Ms Harwood impressed the Commission as honest and accurate witnesses. The Commission accepts Ms Harwood's evidence as to the conversation between her and Ms Williams. The Commission is satisfied that Ms Williams received instructions from Mr Macdonald that she was to advise Mr Murray that he should attend the meeting alone.

Mr Murray decided not to go alone and, instead, asked Mr Frewen to accompany him.

Mr Macdonald said that when he arrived at the Tuscany Restaurant on 15 July 2009, he was distracted by personal criticism he had received in the media earlier that day. He said he discussed his concerns about those matters with Mr Murray and Mr Frewen. According to Mr Frewen, who impressed the Commission as an accurate and careful witness, Mr Macdonald spoke for the first 20 or 30 minutes of the meeting about the adverse media attention he had received.

Mr Macdonald said that, later in the meeting, he, Mr Murray and Mr Frewen discussed matters relevant to Country Energy. Mr Macdonald, however, was unable to identify the subject matter of those discussions when pressed to do so. Mr Frewen and Mr Murray conceded the possibility that Mr Macdonald may have discussed "network things", "blackouts" and "shortages". Mr Murray and Mr Frewen said, however, that they were unable to recall any important matters relevant to Country Energy that were the subject of discussion. The Commission accepts this evidence. Their evidence is supported by the fact that Mr Macdonald did not provide Mr Murray with any prior notice about the matters he wished to discuss at the meeting. No notes were taken of the meeting and no action was taken by Mr Murray, Mr Frewen or Mr Macdonald as a result of any matter discussed at the meeting. In the light of these matters and the evidence of Mr Murray and Mr Frewen about this issue, the Commission is satisfied that no significant matters relevant to the business of Country Energy were raised for discussion by Mr Macdonald during the meeting.

The Commission is fortified in coming to this conclusion by the following circumstances. Mr Murray and Mr Frewen arrived at the Tuscany Restaurant around 7.00 pm. Mr Murray said that Mr Medich joined their table around 20 minutes after he and Mr Frewen arrived at the restaurant. Mr Frewen said Mr Medich arrived at the table about 30 minutes after he and Mr Murray arrived. The Commission is satisfied, therefore, that Mr Medich was seated at their table at about 7.30 pm. Mr Medich remained at the table with Mr Macdonald until after Mr Murray and Mr Frewen left the restaurant at around



9.45 pm. Mr Medich, accordingly, was present throughout most of Mr Macdonald's meeting with Mr Murray and Mr Frewen.

Mr Shipley said that he sat at the table with Mr Murray and Mr Frewen for about 30 to 45 minutes and then returned to Mr Gattellari's table when he sensed that Mr Murray and Mr Frewen were ready to leave the restaurant. According to Mr Frewen, Mr Shipley spoke about his interest in providing electrical services to Country Energy for around 10 to 20 minutes.

In the Commission's view, had Mr Macdonald arranged the meeting with Mr Murray for the purpose of discussing matters relevant to Country Energy as he contended, it is likely he would have asked Mr Medich and Mr Shipley to leave the table after an appropriate time had been spent exchanging pleasantries. Mr Macdonald, however, made no such request of Mr Medich or Mr Shipley. Mr Hale submitted that Mr Macdonald told Mr Medich and Mr Shipley at the end of their presentation to return to their table. It was argued that this "clearly shows that they had interrupted the dinner and the meeting was not pre-planned". This submission is misconceived and is based on a misunderstanding of the evidence. Mr Medich testified that Mr Macdonald told him to go back to his table at the end of his meeting with Mr Maltabarow on 1 June 2009. Mr Macdonald did not dispute that he gave no such direction to Mr Medich or Mr Shipley during the course of the meeting with Mr Murray and Mr Frewen.

Mr Macdonald also did not dispute that he took no action to stop Mr Medich and Mr Shipley from making a business presentation to Mr Murray and Mr Frewen. Mr Macdonald explained that he had accommodated people who had given such presentations in the past, including in circumstances where he "might have disagreed with it". Mr Hale submitted that it was part of Mr Macdonald's role as a minister and public figure to do so and that his conduct at the meeting was consistent with the proper performance of his role.

The degree to which Mr Macdonald indulged Mr Medich and Mr Shipley during the meeting at the expense of engaging in any significant discussion with Mr Murray or Mr Frewen about matters relevant to the business of Country Energy is not convincingly explained on the basis that Mr Macdonald extended Mr Medich a courtesy he commonly gave to persons interested in engaging with the public sector. Mr Macdonald's failure to stop the presentation delivered to Mr Murray and Mr Frewen by Mr Medich and Mr Shipley is entirely consistent with the suggestion that Mr Macdonald had arranged the meeting with Mr Murray so that Mr Medich could give such a presentation.

Some remarks made by Mr Macdonald during the course of the meeting call for specific comment.

Mr Frewen was questioned about the circumstances leading up to Mr Medich's appearance at their table and gave the following evidence:

*[Counsel Assisting]: And did, I wish to know who initiated it? Did Medich come to say hello to Macdonald or did Medich simply arrive and Macdonald introduced him?*

*[Mr Frewen]: My recollection is that he simply arrived and he was then introduced. I do have a recollection however that Minister Macdonald may have said words to the effect that there's someone I'd like you to meet.*

*[Q]: Well was that at the time before Medich arrived or at the time Medich arrived or after Medich arrived?*

*[A]: I can't recall exactly when, but you know, by the nature of that statement it would suggest that it was before.*

*[Q]: Well they're the words that to the best of your recollection that Macdonald used?*

*[A]: To the best of my recollection, yes.*

*[Q]: There is someone that I would like you to meet?*

*[A]: To that effect, words to that effect. Whether it's verbatim or not, but-*

Mr Hale submitted that Mr Frewen, by testifying that Mr Macdonald "may have said words to the effect that there's someone I'd like you to meet", was not asserting anything more than he may have had a recollection of Mr Macdonald making that remark. Mr Hale submitted that in the circumstances the Commission could not place any weight on Mr Frewen's evidence about the comment he attributed to Mr Macdonald. The Commission does not accept this submission. While it is clear that Mr Frewen could not recall the particular words used by Mr Macdonald prior to Mr Medich coming to the table, he was clear that Mr Macdonald had made a remark to the effect that "there was someone he would like them to meet" before Mr Medich arrived at the table. When questioned by Mr Hale about this issue, Mr Frewen gave the following evidence:

- [Mr Hale]: *At what point did he actually say that? Just as Mr Medich was arriving or some earlier stage?*
- [Mr Frewen]: *It was, how could I put it, approximate. It wasn't, it was, it would have been a few minutes I think between the two occurring.*
- [Q]: *Were those the words that he used or that was what you recall as the effect of those words?*
- [A]: *The latter.*

When questioned by Mr Terracini, counsel for Mr Medich, as to whether there was anything to indicate to him that Mr Medich had been invited to their table, Mr Frewen said, "No, other than as I said earlier, that the minister I recall said words to the effect that there's someone I'd like you to meet".

As stated previously, Mr Frewen impressed the Commission as an honest and careful witness who gave accurate evidence. The Commission accepts his evidence about the remark he attributed to Mr Macdonald.

Mr Macdonald said that he believed that Mr Medich joined their table, not as a result of any arrangement he had entered into with Mr Medich, but because Mr Medich was in the habit of joining him when he was dining at the restaurant. Mr Medich denied this. The basic point, however, is plain. Mr Macdonald told Mr Murray and Mr Frewen, in effect, that there was someone he would like them to meet. This was followed very soon by Mr Medich's appearance at their table. Mr Macdonald thereupon introduced Mr Medich to the Country Energy officers. These facts establish that Mr Macdonald knew that Mr Medich would join their table and that he intended to introduce him to Mr Murray and Mr Frewen when he did. The Commission rejects Mr Macdonald's evidence and argument to the contrary. Mr Macdonald's remark about there being a person he would like Mr Murray and Mr Frewen to meet is another indication that he had arranged the meeting for the purpose of introducing Mr Medich to Mr Murray so that Mr Medich could promote Rivercorp to Mr Murray.

Mr Frewen said that, when Mr Medich arrived at the table, Mr Macdonald described him as a "good guy". Mr Murray said that he heard Mr Macdonald utter a similar comment in praise of Mr Medich. Mr Macdonald agreed that he said something "that was positive" about Mr Medich. He said he did not regard the comment as inappropriate. Mr Hale submitted that it was innocuous. In the Commission's view,

the fact that Mr Macdonald vouched for Mr Medich in this way is consistent with an attempt on his part to enhance Mr Medich in the eyes of Mr Murray and Mr Frewen and to improve Mr Medich's prospects of establishing a rapport with Mr Murray and Mr Frewen on the night.

Mr Macdonald was questioned about the possible advantage that might accrue to prospective tenderers like Mr Medich as a result of meeting a senior executive like Mr Murray. He gave the following evidence about this issue:

- [Counsel Assisting]: *Before the adjournment, the Commissioner and I were asking you questions about the advantage or preference that might accrue to a person like Medich in getting an introduction from a minister to the senior bureaucrat. Do you remember those questions?*

[Mr Macdonald]: *Yes, indeed.*

[Q]: *Do you appreciate that business relations, even governmental business relations, can be developed at a personal level?*

[A]: *I'm not sure what you, what you really mean.*

[Q]: *Well, let's put it this way—?*

[A]: *No, no, I'm not—*

[Q]: *So you've answered the question, you don't know, and I'll explain. You see, the tender isn't always awarded or the job is not always award [sic] to the lowest tenderer. Isn't that the truth?*

[A]: *Well, I've never been in, in that side of the, of, of government, I'm not sure.*

[Q]: *Good Lord, you've been a minister in what, a dozen portfolios and you're saying you don't know the answer to that question?*

[A]: *Well, I don't follow the tendering process whatsoever. Sorry.*

[Q]: *The minister for energy, at one time minister for a portfolio where there were hundreds of millions of dollars being spent a year and you don't know about the tender process?*

[A]: *Oh, Mr Watson, in relation to energy I had no financial responsibilities for that department, for those, these SOCs [state-owned corporations].*

[Commissioner]: *Generally, Mr Macdonald, leaving aside energy, generally, to [sic] do you accept that in the course of commerce even involving government tenders are not necessarily awarded to the lowest tenderer?*

[A]: *Well, there'd be a lot of factors involved, yes, that has occurred but I'm not involved in the tendering process.*

[Q]: *Well, I'm not suggesting that you are.*

[Counsel Assisting]: *One of the factors that might be involved is the fact that somebody considering the tenderers knows personally one of the people who made a tender, don't you agree?*

[A]: *Well, I would, I think you would find that in most tenders that a, and tender situations that there is contact between tenderers and the, and the governing process.*

...

[Counsel Assisting]: *Mr Macdonald, if possible can you, see whether you could agree with this proposition, that it would be an advantage to a tenderer to be known in a positive way by the person or persons considering awarding the contract?*

[A]: *But the persons at the table that night weren't the ones that consider the contracts.*

[Q]: *No, no, I asked a general question. Stop. I asked you a general question and answer it?*

[A]: *Could you repeat it.*

[Q]: *Will you concede this: it could accrue as a benefit, an advantage, to a tenderer to be known in a favourable light by the person considering the tenders?*

[A]: *Well, if they, if they are the people considering the tenders that, that is possible but not necessarily so.*

In the Commission's view, Mr Macdonald's answers on this topic were deliberately evasive as he wanted to avoid any suggestion that Mr Medich and Mr Shipley had accrued any advantage arising out of the meeting.

The Commission is satisfied, however, that Mr Macdonald, by introducing Mr Medich and Mr Shipley to Mr Murray and Mr Frewen and allowing them to discuss their interest in engaging in business with Country Energy, provided Mr Medich with preferential treatment that he would not otherwise have enjoyed. Mr Murray said, and the Commission accepts, that he would have avoided the meeting with Mr Macdonald if he had known beforehand that a person might join their table to discuss an interest in engaging in business with Country Energy. Mr Murray gave the following evidence:

[Counsel Assisting]: *Had Macdonald warned you that, before the meeting or even before Medich arrived, that a person might come and sit and dine with us who has an interest in doing business with Country Energy, how would you have reacted?*

[Mr Murray]: *Well, it would have been extremely difficult. I think if it had been before, I would have become unavailable, like, my, and we would have changed, fiddled with the dates, sitting at the table I'm not quite sure frankly what I would have or could have done. I think pretty much as we did.*



The Commission is satisfied that Mr Murray would have refused any request Mr Medich may have made to him directly for a meeting if he knew beforehand that Mr Medich intended to make a business presentation at the meeting.

Mr Hale submitted that the allegation that Mr Macdonald organised the meeting with Mr Murray so that Mr Medich could obtain work for Rivercorp is misguided given the extremely limited role a portfolio minister has in relation to the commercial activities of a state-owned corporation. The Commission rejects this submission. The Commission is satisfied that Mr Macdonald used his influence as minister for energy to arrange a meeting with Mr Murray so that Mr Medich could gain the advantage of making a presentation to a senior executive of a state-owned corporation, an advantage that he would not otherwise have had, and an opportunity not generally available to his competitors.

Mr Murray said that at the end of the night Mr Macdonald suggested that “Mr Medich and/or Mr Shipley” should pay the restaurant bill, which exceeded \$850. Mr Murray said he refused the offer and caused the bill to be paid from a Country Energy account. Mr Macdonald denied suggesting that Mr Medich should pay the bill. The Commission rejects this evidence. Mr Murray’s evidence about this issue is supported by Mr Frewen, who said that Mr Medich indicated that he would pay the bill and that Mr Macdonald responded to that by saying “that Medich would pay”. Mr Hale submitted that, as Mr Frewen was in the Commission’s hearing room at the time Mr Murray gave his evidence about this issue, he may have been influenced to give evidence in a way that was consistent with Mr Murray’s evidence. The Commission rejects this submission. It was never suggested to Mr Frewen during the inquiry that he had been so influenced. Both Mr Murray and Mr Frewen appeared to be reliable and truthful witnesses and there is nothing to suggest that their evidence was false or inaccurate in any material respect. The Commission accepts Mr Murray’s and Mr Frewen’s evidence on this issue, and generally, and is satisfied that Mr Macdonald suggested that Mr Medich should pay for the meal.

Mr Macdonald’s conduct in making this suggestion is consistent with Mr Macdonald believing, at the time, that Mr Medich had obtained something for which he should pay, namely, the opportunity to meet Mr Murray and Mr Frewen and to discuss the prospect of Rivercorp providing services to Country Energy.

The Commission is satisfied that Mr Macdonald’s conduct in arranging a meeting with Mr Murray on 15 July 2009, changing the restaurant that Mr Murray had chosen for the

meeting to the Tuscany Restaurant, causing Mr Murray to be informed that he should attend the meeting alone, failing to raise any significant matters for discussion about matters relevant to the business of Country Energy during the meeting, displaying knowledge of the fact that Mr Medich would join their table and expressing a desire to introduce him to Mr Frewen and Mr Murray when he did so, describing Mr Medich in affirmative personal terms upon his arrival at the table, failing to tell Mr Medich and Mr Shipley to return to their table after sufficient time had expired for an exchange of pleasantries, failing to take any action to stop Mr Medich and Mr Shipley from delivering a business presentation to Mr Murray and Mr Frewen and suggesting to Mr Murray and Mr Frewen that Mr Medich should pay the restaurant bill are circumstances which, when considered in combination, establish that Mr Macdonald had arranged the meeting with Mr Murray for the benefit of Mr Medich.

As previously stated, the Commission is satisfied that Mr Macdonald told Mr Moio on or before 13 July 2009 about the fact that he was having a meeting with Mr Murray at the restaurant. Mr Macdonald said he may have done so in the context of “arranging for a reasonable treatment” of his guests on that night. The Commission rejects this evidence. In the light of the finding made above, the Commission is satisfied that Mr Macdonald told Mr Moio about his meeting with Mr Murray intending that he, Mr Moio, should convey that information to Mr Medich and that Mr Medich, and any other person he wished to have present, should attend the meeting and make a business presentation to Mr Murray.

Mr Hale submitted that Mr Macdonald did not know that Mr Moio had entered into a written agreement with Mr Gattellari on terms requiring him to act on behalf of Rivercorp and, in the absence of that knowledge, had no reason to expect that Mr Moio would provide information about the meeting with Mr Murray to Mr Medich. In the Commission’s view, however, the fact that Mr Macdonald was unaware that Mr Moio was acting on behalf of Rivercorp by virtue of his agreement with Mr Gattellari is not inconsistent with Mr Macdonald having told Mr Moio about the meeting with the intention that he should tell Mr Medich. Mr Macdonald knew that Mr Medich and Mr Moio were in regular contact and that Mr Medich was a regular patron at the Tuscany Restaurant. The Commission is satisfied that Mr Macdonald knew that Mr Moio would have the opportunity to tell Mr Medich about the meeting. The Commission, therefore, rejects this submission.

A compelling inference arises from the friendly relationship between Mr Macdonald and Mr Medich, and from Mr Macdonald’s conduct in making the

arrangements previously described for Mr Murray to attend the restaurant, in requesting Mr Moio to tell Mr Medich when Mr Murray would be attending, and in facilitating the business presentation Mr Medich (and Mr Shipley) made at the restaurant. That inference, which the Commission draws, is that Mr Medich had previously requested Mr Macdonald to use his influence to bring about meetings between Mr Medich and executives of state-owned energy corporations and Mr Macdonald had complied with this request or requests.

In view of the evidence that Mr Medich, Mr Gattellari and Mr Shipley were particularly interested in securing work from Country Energy, and for some time had been trying to arrange a meeting with Country Energy officers, the Commission infers that Mr Medich had specifically requested Mr Macdonald, with whom he was on friendly terms, to arrange a meeting with appropriately responsible persons from Country Energy, and Mr Macdonald had agreed to do so (as is manifest from his conduct in effecting such a meeting).

It is to be noted that, although the Commission finds that Mr Macdonald agreed with Mr Medich that he would arrange a meeting between Mr Medich and Country Energy officers, the corrupt conduct findings that the Commission makes below are not dependent on the existence of such an agreement.

### **Mr Macdonald solicits the sexual services of a woman and attends the Four Seasons Hotel to meet Tiffanie after the meeting on 15 July 2009**

Mr Medich gave evidence at his second compulsory examination that, during his conversation with Mr Moio on 13 July 2009 at the Tuscany Restaurant, Mr Moio told him that Mr Macdonald “wants a girl. He’s going to have some guests on, actually I can’t even remember what night it was”. Further, Mr Medich said that Mr Moio told him that Mr Macdonald wanted to “get a girl discreetly without anybody knowing about it”. It is clear from Mr Medich’s evidence that he understood, based on his conversation with Mr Moio, that Mr Macdonald wanted the “girl” to be made available to him after the meeting with Mr Murray on 15 July 2009. At the public inquiry, Mr Medich agreed that the evidence he gave at the compulsory examination was a “fair summary” of the conversation he had with Mr Moio.

Mr Macdonald denied making any such request of Mr Moio and Mr Moio denied having any conversation with Mr Medich in the terms described by him.

The Commission is satisfied that Mr Medich, in giving evidence at his second compulsory examination about this aspect of his conversation with Mr Moio concerning the meeting of 15 July 2009, had no reason to lie about that conversation and appeared to be telling the truth. It was a feature of Mr Medich’s evidence that he was reluctant to answer questions that he believed could implicate Mr Macdonald in wrongdoing. At his second compulsory examination, Mr Medich was asked whether, as a result of his conversation with Mr Moio, he understood that Mr Macdonald wanted to have sexual relations with a woman on the night of 15 July 2009. Mr Medich gave the following evidence:

- [Counsel Assisting]: You used the word discreetly?
- [Mr Medich]: Well, obviously he’s a married, married man, you know.
- [Q]: That was because your understanding was that the liaison was one where Macdonald wanted the girl for sex, is that right?
- [A]: This is not going to get publicised is it, Commissioner?
- [Q]: A suppression order has been made?
- [A]: Oh, yeah.
- [Commissioner]: I can’t promise that, Mr Medich?
- [A]: I don’t want to get into people’s personal, you know.
- [Q]: You know you have to answer these questions and Mr Bamford would have explained to you what you (not transcribable)?
- [A]: Because he’s, he’s a, he’s a married man.
- [Q]: We understand that but I thought that is what you said anyway. That is correct, isn’t it?
- [A]: I beg your pardon?
- [Q]: He was going there for sex?
- [A]: I would say so, I don’t know what happened or...
- [Q]: You asked Gattellari to arrange it?

[A]: *Moio asked me...*

[Q]: *Yeah?*

[A]: *...and I asked him and then Moio dealt with it after that and, and the instructions he gave was he actually wanted Frank to drive him down there so no one knows about it and he'd have the key and everything else, the girl would be waiting in the room as happens with those types of things.*

[Q]: *And that's what – is that what Frank Moio told you?*

[A]: *Yes.*

In the Commission's view, Mr Medich's concern about damaging Mr Macdonald's reputation and marriage was genuine. The Commission is satisfied that it is unlikely Mr Medich would falsely attribute words to Mr Moio that could adversely reflect on Mr Macdonald's reputation or cause trouble in his marriage. The Commission considers that in the passage quoted, Mr Medich was giving truthful evidence.

Aspects of Mr Medich's evidence about the terms of his conversation with Mr Moio are supported by other evidence. Mr Medich said that Mr Moio asked him to speak to Mr Gattellari about Mr Macdonald's request for the services of a woman. This is supported by Mr Gattellari. He said that Mr Medich asked him to ensure that a selection of women were present at the Tuscany Restaurant so that Mr Macdonald could choose the woman he wanted. Mr Gattellari said that, in response to Mr Medich's request, he invited Tiffanie, Cindy (Tiffanie's friend), Annie (Mr Gattellari's girlfriend) and another woman to the Tuscany Restaurant on the evening of 15 July 2009.

Mr Medich denied asking Mr Gattellari to arrange the attendance of a selection of women at the Tuscany Restaurant on the evening of 15 July 2009. He did not deny, however, that he spoke to Mr Gattellari in response to Mr Moio's request for assistance. The Commission is satisfied that, at the very least, Mr Medich asked Mr Gattellari to arrange that a woman prepared to offer sexual services to Macdonald be available for that purpose after the meeting with the Country Energy executives.

The Commission is satisfied that Mr Medich gave truthful evidence when he said that, on 13 July 2009, Mr Moio told him that Mr Macdonald "wanted a girl" on the evening of 15 July.

The Commission is also satisfied that Mr Moio asked Mr Medich to arrange the services of a woman for Mr Macdonald as a result of a request made to him by Mr Macdonald. In the Commission's view, Mr Moio would not, on his own initiative, have asked Mr Medich to provide a "girl" for Mr Macdonald. There was nothing in the evidence that would suggest that Mr Moio would have made that request of his own volition and that possibility was not suggested to him by any party.

Mr Hale submitted that the Commission should not accept that Mr Macdonald sought the services of a woman prior to or on 15 July 2009. Mr Hale argued that the women Mr Gattellari had invited to the Tuscany Restaurant on 15 July had, in fact, been arranged by Mr Gattellari for himself and Mr Medich, and not for Mr Macdonald. Mr Hale noted that on Sunday, 12 July 2009, Mr Gattellari made telephone calls to Mr Medich and a number of women. Mr Medich said that the calls made by Mr Gattellari related to arrangements they were making "to get some girls over" and that those arrangements had "nothing to do with Mr Macdonald or anybody else". Mr Hale submitted that this evidence demonstrated that Mr Medich was "mistaken in his recollection about the pre-arrangement of a woman for Mr Macdonald". The Commission rejects this submission as it fails to have regard to the whole of Mr Medich's evidence. In addition, the submission is inconsistent with the evidence of Mr Gattellari, who said that he arranged women for Mr Macdonald to choose from on 15 July 2009.

What, in fact, occurred on the evening of 15 July 2009 directly contradicts Mr Hale's submission and is dealt with later. At this stage, the Commission will merely refer specifically to other evidence of Mr Medich that is contrary to Mr Hale's submission.

Immediately after giving the evidence relied upon by Mr Hale, Mr Medich said that "a request was made on Monday and I actually spoke to Gattellari cause I said I don't really want to go that night because I knew I had a busy Wednesday of my own". The reference in Mr Medich's evidence to "a request" was a reference to Mr Moio's request to him on Monday, 13 July 2009, for assistance in arranging a "girl" for Mr Macdonald. Mr Medich did not depart from this evidence. The Commission finds that any plans that Mr Medich and Mr Gattellari may have made on 12 July 2009 "to get some girls over" were independent of the arrangements made by Mr Gattellari to assemble a group of women at the Tuscany Restaurant on 15 July 2009 for Mr Macdonald's benefit. This is borne out in the following evidence given by Mr Medich in response to questions asked by Mr Hale:

- [Mr Hale]: *Yes. And you've told us there were, there were arrangements for a party that evening [that is, the evening of 15 July] as well, weren't there?*
- [Mr Medich]: *There was no arrangement for a party.*
- [Q]: *There wasn't?*
- [A]: *No. That was Gattellari invited himself to my house during that evening.*
- [Q]: *But were you aware before he extended those invitations that he was going to do so?*
- [A]: *No. And as I explained before, the reason being that he was going to have some left over girls and he wanted others to take them and I, and I knocked that back.*

The reference by Mr Medich to the “left over girls” was a reference by him to the women left at Mr Gattellari’s table after Mr Macdonald had made his selection on the evening of 15 July 2009. In that part of his evidence, Mr Medich was only discussing what occurred on 15 July; nothing in the quoted passage concerned what might have occurred on Sunday, 12 July 2009. For all the reasons given, the Commission rejects Mr Hale’s submission.

Mr Hale submitted that Mr Medich’s evidence about his conversation with Mr Moio, in so far as it implicated Mr Macdonald, was hearsay and inadmissible in any criminal proceedings. In making findings of fact, however, the Commission is entitled to have regard to evidentiary material that tends logically to show the existence of facts whether or not it is evidence that would be admissible in a criminal court. The Commission rejects this submission.

Mr Macdonald testified that, after Mr Murray and Mr Frewen left the restaurant, he told Mr Medich that he would like to have a massage. He said that it was possible that Mr Medich may have suggested the idea of a massage to him. Mr Macdonald said that he suggested the Four Seasons Hotel to Mr Medich as a venue for the massage. He said that Mr Medich drove him to the hotel for the purposes of receiving a remedial massage and that he entered the hotel room (in which Tiffanie was waiting) for the purpose of receiving that massage.

Mr Hale pointed out that Mr Medich agreed that, after Mr Murray and Mr Frewen left the restaurant, Mr Macdonald said that he felt like a “good massage” and that he was “going for a massage”. Mr Hale submitted that the fact that Mr

Medich engaged in a conversation with Mr Macdonald about “massages” undermines the contention that Mr Medich (or anyone) had arranged for a woman to provide sexual services to Mr Macdonald.

The Commission rejects this submission. Mr Macdonald’s evidence that Mr Medich made available to him, and arranged and paid for, a woman untrained in massage (who happened, apparently by chance, to be present at the restaurant while Mr Macdonald was there) to give him a stress-relieving massage in an expensive luxury hotel room late on the evening of 15 July 2009, and that he attended the hotel for that purpose, is, to say the least, far-fetched and improbable.

In response to questioning by Mr Hale, Mr Medich denied that he arranged a massage for Mr Macdonald. He denied that Mr Macdonald suggested the Four Seasons Hotel as the place where the massage should take place. He denied that he, Mr Medich, told Mr Gattellari that Mr Macdonald was interested in having a massage at the Four Seasons Hotel. Mr Medich admitted, however, that he drove Mr Macdonald to the hotel.

The Commission accepts that Mr Medich gave truthful evidence when he denied these matters. Had Mr Medich agreed to arrange a remedial massage for Mr Macdonald at the Four Seasons Hotel he would have conveyed those arrangements to Mr Gattellari, and he, in turn, would have made those arrangements known to Mr Kaminic and Tiffanie. The evidence of Mr Kaminic, Mr Gattellari and Tiffanie (who, as mentioned, was present at the Tuscany Restaurant while the dinner was taking place) demonstrates, however, that shortly after Mr Murray and Mr Frewen left the restaurant, Mr Macdonald, Mr Medich and Mr Gattellari set events in motion that led, first, to Tiffanie going with Mr Kaminic to the Four Seasons Hotel, taking a room there and going into that room where she waited for Mr Macdonald, and, secondly, led to Mr Macdonald attending the Four Seasons Hotel later that night and entering the room where Tiffanie was waiting for him, but for purposes other than giving him a stress-relieving massage.

This part of the events of the evening of 15 July 2009 commences when, according to Mr Gattellari, at some stage during the evening Mr Medich came to his table and said that Mr Macdonald had made his choice and pointed to Tiffanie. Mr Gattellari said that Mr Medich told him to take care of the rest of the arrangements. Mr Gattellari said that he then instructed Mr Kaminic to take Tiffanie to the Four Seasons Hotel, book a room in the hotel, place Tiffanie in the room with a key and then deliver the second room key to Mr Macdonald when he arrived at the hotel. There was no dispute that, prior to 15 July 2009, Mr Gattellari had arranged for Tiffanie to meet men with



whom she would have sex. Mr Gattellari had paid her sums of money in return for doing so. Mr Gattellari said that, on this occasion, he told Tiffanie that the man that she was to meet at the hotel was “very important to us and he should be looked after the best she could”.

The Commission accepts Mr Gattellari’s evidence about the circumstances that led to Tiffanie being despatched to the Four Seasons Hotel. The evidence of Mr Kaminic and Tiffanie is consistent with Mr Gattellari’s account. Mr Kaminic said that Mr Gattellari instructed him to take Tiffanie to the Four Seasons Hotel and book a room in the hotel for her. Mr Gattellari gave him \$400 to cover the cost of the room. According to Mr Kaminic, Mr Gattellari gave him the money “under the table” as they did not want anyone to see money changing hands. Mr Kaminic drove Tiffanie to the hotel. Mr Kaminic said that during the trip he told her that she was to meet a gentleman at the hotel, stay in the room as long as required and do what was asked of her.

Mr Kaminic said the car trip to the Four Seasons Hotel took about 20 minutes. Records produced by the hotel indicate that Mr Kaminic booked a room in the hotel at 10.31 pm. The Commission is satisfied, therefore, that Mr Kaminic left the Tuscany Restaurant with Tiffanie around 10.00 pm. Mr Murray paid the restaurant bill at about 9.40 pm. He and Mr Frewen left the restaurant shortly thereafter. The Commission infers that Mr Macdonald told Mr Medich of his decision to attend the Four Seasons Hotel with Tiffanie shortly after Mr Murray and Mr Frewen left the restaurant.

The Commission is satisfied that Mr Medich communicated that decision to Mr Gattellari. Mr Bamford, Mr Medich’s solicitor, submitted that Mr Macdonald may have spoken directly to Mr Gattellari or indirectly through Mr Moio. The Commission rejects this submission. Mr Macdonald was not friendly or even familiar with Mr Gattellari and there was no evidence adduced at the public inquiry suggesting that Mr Macdonald was in direct contact with Mr Gattellari at any stage during the evening of 15 July 2009 or at any other time. Mr Moio gave evidence that he (Mr Moio) left the restaurant at an early stage of the evening. This evidence was supported by Mr Moio’s telephone records, which indicated that his mobile telephone was being used at a separate location from the restaurant from around 8.30 pm that evening.

Mr Macdonald said his decision at the Tuscany Restaurant to accept Mr Medich’s offer of a massage was adversely affected by his level of intoxication. As previously stated, the Commission rejects Mr Macdonald’s contention that Mr Medich agreed to arrange a massage for him at the Four Seasons Hotel. The Commission also rejects Mr

Macdonald’s claim that he was intoxicated at the time he decided to travel to the Four Seasons Hotel. As already discussed, the Commission is satisfied that Mr Macdonald communicated his intention to travel to the Four Seasons Hotel to meet Tiffanie shortly after Mr Murray and Mr Frewen left the restaurant. Neither Mr Murray nor Mr Frewen said that Mr Macdonald appeared to be intoxicated when they left the restaurant. The Commission accepts their evidence. It is supported by Mr Medich’s evidence. During his compulsory examination, Mr Medich said that Mr Macdonald had consumed a few alcoholic drinks. He agreed, however, that Mr Macdonald was talking sensibly during the course of the evening and was able to respond appropriately to subjects raised during conversation. At the public inquiry, Mr Medich said that Mr Macdonald was not drunk.

Tiffanie gave her evidence through a Mandarin interpreter. She acknowledged, however, that she had reasonably good English skills. Tiffanie provided a statement to the Commission and it was tendered in evidence at the public inquiry.

Tiffanie said that, before she left the restaurant, Mr Gattellari told her that she would “see an important person for him” and “that she was to treat him well”. She said she expected to have sexual intercourse with the man she was meeting at the hotel and that she would receive payment from Mr Gattellari for doing so. Tiffanie said that the hotel room did not contain any massage table or any massage lotions. She said she was not a qualified masseuse.

There was no dispute that Mr Medich drove Mr Macdonald to the Four Seasons Hotel and that, upon arriving at the hotel, Mr Macdonald entered the bar of the hotel while Mr Medich parked the car. Mr Medich said that, as he entered the hotel, he was immediately met by Mr Kaminic who gave him the key to the room in which Tiffanie was waiting. Mr Medich gave the key to Mr Macdonald and left the hotel with Mr Kaminic. Mr Macdonald then entered the hotel room in which Tiffanie was waiting.

Tiffanie said that the man who entered the room removed his coat. A short while later, they sat on the bed. Tiffanie said that she removed all her clothes, except her underwear, and the man kept his other clothes on. She said that he kissed her roughly. She said that she “felt reluctant to be kissed by him because I didn’t like him”. He told her that, “if you knew who I was you would be very surprised”. Tiffanie said that, after he kissed her, they talked. She could not recall if he fell asleep. She said that he was the first to leave the room. Hotel records indicate that the key was returned around 3.00 am

on 16 July 2009. This was the key that was in Tiffanie's possession. Mr Macdonald left the hotel while still in possession of the key provided to him by Mr Medich. Tiffanie said that the man in the room did not pay her any money. She said, however, that a few days later Mr Gattellari paid her \$400 in cash for going to the hotel with the man.

Mr Macdonald did not contradict Tiffanie's account. He said that he was drunk when he attended the hotel and had little recollection of his meeting with Tiffanie other than entering the room, taking off his coat, lying on the bed and falling asleep.

Mr Hale submitted that Tiffanie's account, as set out in her statement, could not be relied upon by the Commission. Mr Hale noted that Tiffanie's statement was in English and had not been translated to her before she signed it. Mr Hale argued that this raised the possibility that the statement was inaccurate. Tiffanie's statement was, however, translated to her in Mandarin on two separate occasions during the course of her evidence at the public inquiry. Tiffanie affirmed the truth and accuracy of her statement on each occasion. The Commission rejects Mr Hale's submission.

Mr Hale also noted that Tiffanie, in response to a question about whether she had kissed Mr Macdonald, said, "I don't kiss him". Mr Hale relied upon Tiffanie's evidence to argue that she was unsure whether there was any kissing at all. The Commission rejects this submission. Mr Hale failed to have regard to the whole of Tiffanie's evidence. Tiffanie was asked the following question by Mr Hale, "and you say he kissed you but could you have kissed him?" She replied, "No. I don't kiss him". In the Commission's view, Tiffanie was not suggesting by that answer that there had been no kissing at all. She was confirming that Mr Macdonald had kissed her and not the other way around, as suggested by the question.

Tiffanie impressed the Commission as a candid witness who did not attempt to extricate herself from any impropriety. The Commission is satisfied that she gave an accurate and truthful version of the events that occurred at the hotel. The Commission accepts her evidence. Tiffanie did not suggest that she and Mr Macdonald had sex. Nevertheless, the Commission is satisfied that Mr Macdonald went to the hotel intending to have a sexual liaison with Tiffanie, that he kissed her and that he did not pay her for the services she provided to him. This adds further support to the conclusion that Mr Macdonald asked Mr Moio to arrange a woman for him following the meeting on 15 July 2009.

The Commission makes the following findings:

1. Sometime on or prior to 13 July 2009, Mr Macdonald told Mr Moio that he wanted the sexual services of a woman to be made available to him after the meeting with Mr Murray on 15 July. Mr Moio agreed to arrange this.
2. On 13 July 2009, Mr Moio told Mr Medich that Mr Macdonald was meeting with a Country Energy executive at the Tuscany Restaurant on 15 July and that Mr Macdonald wanted a "girl" to be made available to him after the meeting. Mr Moio asked Mr Medich's assistance in making such an arrangement.
3. Mr Medich agreed to facilitate Mr Macdonald's request and asked Mr Gattellari to make the necessary arrangements.
4. Mr Gattellari arranged for a selection of women to be at the restaurant on 15 July 2009 so that Mr Macdonald could take his pick from them.
5. After Mr Murray and Mr Frewen left the restaurant on the evening of 15 July 2009, Mr Medich informed Mr Gattellari that Mr Macdonald had selected Tiffanie and wished to rendezvous with her in a room at the Four Seasons Hotel later that night. Mr Gattellari then instructed Mr Kaminic to take Tiffanie to the Four Seasons Hotel.
6. Later that evening, Mr Medich drove Mr Macdonald to the Four Seasons Hotel. Mr Macdonald entered the hotel room, in which Tiffanie was waiting, intending to have sexual relations with her. He kissed her. Mr Macdonald and Tiffanie left the hotel separately around 3.00 am the following day.

### **The basis upon which Mr Macdonald made a request for a "girl" and the basis upon which he accepted the accommodation and the services of Tiffanie**

After Mr Macdonald left the hotel room on the evening of 15 July 2009, he went home. At no time did he repay Mr Medich or anyone else for the expenses incurred in relation to the accommodation at the hotel or the provision of the services of Tiffanie. Mr Macdonald did not dispute that he simply assumed that Mr Medich would arrange and pay for the room and the services of Tiffanie. Mr Macdonald said that he may have indicated to Mr Medich on the night that he would repay him. He said that he "had a vague

memory” that he may have offered to repay Mr Medich after 15 July 2009. At one point, Mr Medich attempted to support this evidence of Mr Macdonald. This evidence is lacking any detail and is unpersuasive. The Commission is satisfied that Mr Macdonald did not offer to pay anyone for the accommodation or services.

In the Commission’s view, it is no coincidence that Mr Macdonald’s request for a “girl” followed directly upon the arrangements he made for the meeting between Mr Medich and Mr Murray. The Commission is satisfied that Mr Macdonald, having arranged the meeting for Mr Medich’s benefit, then caused Mr Medich to be informed of those arrangements and of his wish to avail himself of the sexual services of a woman. The fact that Mr Macdonald wished to avail himself of the services of a woman after the conclusion of a meeting he arranged for Mr Medich’s benefit, and the fact that Mr Macdonald had no intention of paying for those services, demonstrates that he sought the sexual services of a woman from Mr Medich (through Mr Moio) implicitly as a reward for arranging access to Country Energy executives, and that he accepted the services of the woman and the hotel accommodation on that basis. The fact that Mr Macdonald stayed at the restaurant with Mr Medich after Mr Murray and Mr Frewen left is also consistent with him expecting to receive this kind of reward from Mr Medich for his role in arranging the meeting. The Commission is satisfied that Mr Macdonald sought and accepted the provision of sexual services of a woman and hotel accommodation as a reward for arranging access to Country Energy executives for Mr Medich.

Mr Medich denied that he provided these benefits to Mr Macdonald as a reward for arranging the meeting with Mr Murray. The Commission rejects this evidence. The Commission is satisfied that Mr Medich and Mr Gattellari knew that Mr Macdonald had invited Mr Medich to the meeting with Mr Murray for their benefit and that Mr Macdonald wanted the sexual services of a woman to be provided to him immediately after the meeting concluded. Mr Medich acceded to that request and instructed Mr Gattellari to make the necessary arrangements for the services to be provided to Mr Macdonald.

The Commission is satisfied that Mr Medich and Mr Gattellari did not expect Mr Macdonald to pay for those services. Mr Medich, having driven Mr Macdonald to the Four Seasons Hotel and received the hotel key from Mr Kaminic upon his arrival, knew that Mr Kaminic had booked and paid for the room on behalf of Mr Macdonald. Mr Gattellari said that he used money belonging to the RIV Group to pay for Tiffanie. He said that Mr Medich knew this because Mr Medich had asked him to arrange “the girl” for Mr Macdonald and Mr Medich knew it was his practice

to pay for “girls that were used for any of the directors that wanted to have a night out”.

Mr Bamford submitted that Mr Gattellari’s explanation was unconvincing as Mr Macdonald was not a director of a company within the RIV Group. The Commission is not persuaded by this submission. The point of Mr Gattellari’s evidence was that Mr Medich knew that, in circumstances where Mr Gattellari arranged the services of a “girl”, Mr Gattellari and not the recipient of those services would pay for them. The Commission is satisfied that Mr Gattellari gave truthful evidence about this issue and accepts his evidence.

In the light of the conclusions referred to above, the Commission is satisfied that Mr Medich and Mr Gattellari knew that Mr Macdonald sought the sexual services of a woman as a reward for arranging the meeting with Mr Murray and that they arranged, and paid for, the provision of those services and the hotel accommodation on that basis.

## Corrupt conduct

The Commission’s approach to making findings of corrupt conduct is set out in Appendix 2 to this report.

First, the Commission makes findings of relevant facts on the balance of probabilities. The Commission then determines whether those facts come within the terms of section 8(1) or section 8(2) of the ICAC Act. If they do, the Commission then considers section 9 and the jurisdictional requirements of section 13(3A) of the ICAC Act.

### Ian Macdonald

The Commission is satisfied that, on or prior to 13 July 2009, Mr Macdonald exercised his influence as the minister for energy to cause Mr Murray of Country Energy to attend the Tuscany Restaurant on 15 July 2009 so that Mr Medich, with whom Mr Macdonald was on friendly terms, and any other person Mr Medich wished to have present, could attend the meeting and promote the electrical services of Rivercorp to Mr Murray. On or prior to 13 July 2009, Mr Macdonald solicited the sexual services of a woman as a reward for doing so.

Such conduct is corrupt conduct for the purpose of section 8 of the ICAC Act. It is conduct which, on Mr Macdonald’s part, constitutes or involves the dishonest exercise of his official functions under section 8(1)(b) of the ICAC Act as he arranged the meeting for the benefit of Mr Medich with an expectation of receiving a reward for doing so and concealed the true purpose of the meeting from Mr Murray. It is also conduct that,



on Mr Macdonald's part, constitutes or involves a breach of public trust under section 8(1)(c) of the ICAC Act as it was a discharge of his official functions for the purpose of promoting Mr Medich's private business interests in the expectation of obtaining a reward for doing so.

As set out above, the Commission is satisfied that, on or prior to 13 July 2009, Mr Macdonald exercised his influence as the minister for energy to cause Mr Murray of Country Energy to attend the Tuscany Restaurant on 15 July 2009 so that Mr Medich, with whom Mr Macdonald was on friendly terms, and any other person Mr Medich wished to have present, could attend the meeting and promote the electrical services of Rivercorp to Mr Murray. The Commission is also satisfied that on 15 July 2009, Mr Macdonald received hotel accommodation and the services of a woman as a reward for arranging the meeting.

Such conduct is corrupt conduct for the purpose of section 8 of the ICAC Act. It is conduct which, on Mr Macdonald's part, constitutes or involves the dishonest exercise of his official functions under section 8(1)(b) of the ICAC Act as he arranged the meeting for the benefit of Mr Medich and concealed the true purpose of the meeting from Mr Murray in return for which he received a reward. It is conduct which, on Mr Macdonald's part, constitutes or involves a breach of public trust under section 8(1)(c) of the ICAC Act as it was a discharge of his official functions for the purpose of promoting Mr Medich's private business interests in return for which he obtained a reward.

For the purpose of section 9(1)(a) of the ICAC Act, it is relevant to consider section 249B(1) of the Crimes Act. Section 249B(1) provides as follows:

- (1) If any agent corruptly receives or solicits (or corruptly agrees to receive or solicit) from another person for the agent or for anyone else any benefit:*
- (a) as an inducement or reward for or otherwise on account of:*
- (i) doing or not doing something, or having done or not having done something, or*
- (ii) showing or not showing, or having shown or not having shown, favour or disfavour to any person,*
- in relation to the affairs or business of the agent's principal, or*
- (b) the receipt or any expectation of which would in any way tend to influence the agent to show, or not to show, favour or disfavour to any person in relation to the affairs or business of the agent's principal,*
- the agent is liable to imprisonment for 7 years.*

An offence under section 249B(1)(a)(ii) of the Crimes Act requires the "agent" to solicit or receive a benefit from a person as a reward for "showing favour" to any person in "relation to the affairs or business of the agent's principal". The definition of "agent" includes "any person serving under the Crown (which in this case is referred to in this Part as the person's principal)". As the minister for energy, Mr Macdonald was a person "serving under the Crown". Mr Macdonald showed favour to Mr Medich by using the influence of his office to secure Mr Murray's attendance at the Tuscany Restaurant on 15 July 2009. The exercise of Mr Macdonald's ministerial authority related to the "affairs or business" of Mr Macdonald's principal, in this case the Crown in right of the NSW Government.

The Commission is satisfied for the purposes of section 9(1)(a) of the ICAC Act that, if the facts it has found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Macdonald has committed an offence under section 249B(1)(a)(ii) of the Crimes Act of corruptly soliciting a benefit from Mr Medich as a reward for showing favour to Mr Medich in relation to the affairs or business of Mr Macdonald's principal and also an offence under section 249B(1)(a)(ii) of the Crimes Act of corruptly receiving a benefit from Mr Medich and Mr Gattellari as a reward for showing favour to Mr Medich in relation to the affairs or business of Mr Macdonald's principal. The common law offence of misconduct in public office is part of the criminal law of NSW. The elements of the offence have been considered in *R v Huy Vinh Quach* (2010) 201 A Crim R 522. Redlich JA (with whom Ashley JA and Hansen AJA agreed) said that the elements were as follows:

- (1) a public official;*
- (2) in the course of or connected to his public office;*
- (3) wilfully misconducts himself or herself, by act or omission, for example, by wilfully neglecting or failing to perform his or her duty;*
- (4) without reasonable excuse or justification; and*
- (5) where such misconduct is serious and meriting criminal punishment having regard to the responsibilities of the office and the officeholder, the importance of the public objects which they serve and the nature and extent of the departure from those objects.*

The Commission is satisfied for the purposes of section 9(1)(a) of the ICAC Act that, if the facts it has found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate

tribunal, they would be grounds on which such a tribunal would find that Mr Macdonald committed the common law offence of misconduct in public office by using the influence of his office to secure Mr Murray's attendance at the Tuscany Restaurant on 15 July 2009 so that Mr Medich could promote his private business interests to Mr Murray, in the expectation that Mr Macdonald would be rewarded for doing so.

The Commission is also satisfied for the purposes of section 9(1)(a) of the ICAC Act that, if the facts it has found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Macdonald has committed the common law offence of misconduct in public office by using the influence of his office to secure Mr Murray's attendance at the Tuscany Restaurant on 15 July 2009 so that Mr Medich could promote his private business interests to Mr Murray and by receiving a reward for doing so.

The conduct described in the preceding two paragraphs comes within the scope of misconduct that is serious and meriting criminal punishment, particularly having regard to Mr Macdonald's role and responsibilities as a minister of Parliament.

For the foregoing reasons, the Commission is of the opinion that Mr Macdonald's conduct can properly be characterised as corrupt conduct within the meaning of the ICAC Act, and on the bases as indicated. The Commission so finds, namely, that Mr Macdonald engaged in corrupt conduct in the respects detailed above.

### **Ronald (Ron) Medich**

The Commission is satisfied that, on 15 July 2009, Mr Medich, in conjunction with Mr Gattellari, arranged hotel accommodation and the services of a woman to be provided to Mr Macdonald as a means of rewarding Mr Macdonald for showing favour to Mr Medich by arranging the 15 July 2009 meeting with Mr Murray so that Mr Medich, and any other person he wished to have present, could attend the meeting and promote the electrical services of Rivercorp to Mr Murray.

Such conduct is corrupt conduct for the purpose of section 8 of the ICAC Act. It is conduct which, on Mr Medich's part, constitutes or involves conduct that adversely affects the honest or impartial exercise of official functions by Mr Macdonald under section 8(1)(a) of the ICAC Act. It is also conduct which, on Mr Medich's part, adversely affects the exercise of official functions by Mr Macdonald and could involve bribery or the offer of secret commissions and, therefore, comes within section 8(2) of the ICAC Act.

For the purpose of section 9(1)(a) of the ICAC Act it is relevant to consider section 249B(2) of the Crimes Act. Section 249B(2) provides as follows:

- (2) *If any person corruptly gives or offers to give to any agent, or to any other person with the consent or at the request of any agent, any benefit:*
  - (a) *as an inducement or reward for or otherwise on account of the agent's:*
    - (i) *doing or not doing something, or having done or not having done something, or*
    - (ii) *showing or not showing, or having shown or not having shown, favour or disfavour to any person*
  - in relation to the affairs or business of the agent's principal, or*
  - (b) *the receipt or any expectation of which would in any way tend to influence the agent to show, or not to show, favour or disfavour to any person in relation to the affairs or business of the agent's principal,*

*the firstmentioned person is liable to imprisonment for 7 years.*

The Commission is satisfied for the purposes of section 9(1)(a) of the ICAC Act that, if the facts it has found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Medich has committed an offence under section 249B(2) of the Crimes Act of corruptly giving a benefit to Mr Macdonald as a reward for Mr Macdonald showing favour to him in relation to the affairs or business of Mr Macdonald's principal.

### **Fortunato (Lucky) Gattellari**

The Commission is satisfied that, on 15 July 2009, Mr Gattellari, in conjunction with Mr Medich, arranged hotel accommodation and the services of a woman to be provided to Mr Macdonald as a means of rewarding Mr Macdonald for showing favour to Mr Medich by arranging the 15 July 2009 meeting with Mr Murray so that Mr Medich, and any other person he wished to have present, could attend the meeting and promote the electrical services of Rivercorp to Mr Murray.

Such conduct is corrupt conduct for the purpose of section 8 of the ICAC Act. It is conduct which, on Mr Gattellari's part, constitutes or involves conduct that adversely affects the honest or impartial exercise of

official functions by Mr Macdonald under section 8(1)(a) of the ICAC Act. It is also conduct which, on Mr Gattellari's part, adversely affects the exercise of official functions by Mr Macdonald and could involve bribery or the offer of secret commissions and, therefore, comes within section 8(2) of the ICAC Act.

The Commission is satisfied for the purposes of section 9(1)(a) of the ICAC Act that, if the facts it has found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Gattellari has committed an offence under section 249B(2) of the Crimes Act of corruptly giving a benefit to Mr Macdonald as a reward for Mr Macdonald showing favour to Mr Medich in relation to the affairs or business of Mr Macdonald's principal.

## Section 74(A) statements

In making a public report, the Commission is required by the provisions of section 74A(2) of the ICAC Act to include, in respect of each "affected" person, a statement as to whether or not in all the circumstances, the Commission is of the opinion that consideration should be given to the following:

- a) obtaining the advice of the Director of Public Prosecutions (DPP) with respect to the prosecution of the person for a specified criminal offence
- b) the taking of action against the person for a specified disciplinary offence
- c) the taking of action against the person as a public official on specified grounds, with a view to dismissing, dispensing with the services of or otherwise terminating the services of the public official.

An "affected" person is defined in section 74A(3) of the ICAC Act as a person against whom, in the Commission's opinion, substantial allegations have been made in the course of, or in connection with, an investigation.

The Commission is satisfied that, in respect of the matters canvassed in this chapter, Mr Macdonald, Mr Medich and Mr Gattellari are "affected" persons.

### Ian Macdonald

Mr Macdonald's evidence was given under a declaration pursuant to section 38 of the ICAC Act. The effect of the declaration is that his evidence cannot be used in evidence against him in any subsequent criminal prosecution, except a prosecution for an offence under the ICAC Act.

In the course of the investigation, however, the Commission obtained other evidence that would be admissible in the prosecution of Mr Macdonald, including the evidence of Mr Murray, Mr Frewen and Mr Shipley concerning Mr Macdonald's and Mr Medich's conduct at the meeting on 15 July 2009 and the evidence of Tiffanie about the circumstances in which she attended the Four Seasons Hotel and her assignation with Mr Macdonald in the hotel room. There is also, potentially, the evidence of Mr Gattellari, which would be available if the DPP were to consider a means of securing his evidence if he objected to giving such evidence on the grounds that to do so may implicate him in the commission of a criminal offence.

The Commission, therefore, is of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Macdonald for an offence of corruptly receiving a benefit contrary to section 249B(1) of the Crimes Act and an offence of misconduct in public office.

There is insufficient admissible evidence to warrant the Commission forming the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Macdonald for the offence of corruptly soliciting a benefit contrary to section 249B(1) of the Crimes Act. This is because Mr Medich's evidence that Mr Moio told him that Mr Macdonald wanted the services of a woman after the meeting on 15 July 2009 is hearsay. Such evidence is generally inadmissible in criminal proceedings. As previously stated, in making findings of fact and corrupt conduct findings, the Commission is entitled to have regard to material, including hearsay evidence, that tends logically to show the existence of facts whether or not such evidence would be admissible in a court of law.

### Ronald (Ron) Medich

Mr Medich's evidence was made under a declaration pursuant to section 38 of the ICAC Act. The effect of the declaration is that his evidence cannot be used in evidence against him in any subsequent criminal prosecution, except for a prosecution for an offence under the ICAC Act.

In the course of the investigation, however, the Commission obtained other evidence that would be admissible in the prosecution of Mr Medich, including the evidence of Mr Murray, Mr Frewen, Mr Shipley and Mr Rowe. There is also, potentially, the evidence of Mr Gattellari, which would be available if the DPP were to consider a means of securing his evidence if he objected to giving such evidence on the ground that to do so may implicate him in the commission of a criminal offence.

The Commission is of the opinion that consideration should be given to obtaining the advice of the DPP with respect to

the prosecution of Mr Medich for an offence of corruptly giving a benefit to Mr Macdonald as a reward for Mr Macdonald showing favour to him in relation to the affairs or business of Mr Macdonald's principal under section 249B(2) of the Crimes Act.

### **Fortunato (Lucky) Gattellari**

Mr Gattellari's evidence was made under a declaration pursuant to section 38 of the ICAC Act. The effect of the declaration is that his evidence cannot be used in evidence against him in any subsequent criminal prosecution, except for a prosecution for an offence under the ICAC Act.

There is insufficient admissible evidence to warrant the Commission forming the opinion that consideration should be given to obtaining the advice of the DPP in relation to the prosecution of Mr Gattellari.



## Appendix 1: The role of the Commission

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The ICAC Act is concerned with the honest and impartial exercise of official powers and functions in, and in connection with, the public sector of NSW, and the protection of information or material acquired in the course of performing official functions. It provides mechanisms which are designed to expose and prevent the dishonest or partial exercise of such official powers and functions and the misuse of information or material. In furtherance of the objectives of the ICAC Act, the Commission may investigate allegations or complaints of corrupt conduct, or conduct liable to encourage or cause the occurrence of corrupt conduct. It may then report on the investigation and, when appropriate, make recommendations as to any action which the Commission believes should be taken or considered.

The Commission can also investigate the conduct of persons who are not public officials but whose conduct adversely affects or could adversely affect, either directly or indirectly, the honest or impartial exercise of official functions by any public official, any group or body of public officials or any public authority. The Commission may make findings of fact and form opinions based on those facts as to whether any particular person, even though not a public official, has engaged in corrupt conduct.

The ICAC Act applies to public authorities and public officials as defined in section 3 of the ICAC Act.

The Commission was created in response to community and Parliamentary concerns about corruption which had been revealed in, inter alia, various parts of the public service, causing a consequent downturn in community confidence in the integrity of that service. It is recognised that corruption in the public service not only undermines confidence in the bureaucracy but also has a detrimental effect on the confidence of the community in the processes of democratic government, at least at the level of government in which that corruption occurs. It is also recognised that corruption commonly indicates and promotes inefficiency, produces waste and could lead to loss of revenue.

The role of the Commission is to act as an agent for changing the situation which has been revealed. Its work involves identifying and bringing to attention conduct which is corrupt. Having done so, or better still in the course of so doing, the Commission can prompt the relevant public authority to recognise the need for reform or change, and then assist that public authority (and others with similar vulnerabilities) to bring about the necessary changes or reforms in procedures and systems, and, importantly, promote an ethical culture, an ethos of probity.

The principal functions of the Commission, as specified in section 13 of the ICAC Act, include investigating any circumstances which in the Commission's opinion imply that corrupt conduct, or conduct liable to allow or encourage corrupt conduct, or conduct connected with corrupt conduct, may have occurred, and cooperating with public authorities and public officials in reviewing practices and procedures to reduce the likelihood of the occurrence of corrupt conduct.

The Commission may form and express an opinion as to whether consideration should or should not be given to obtaining the advice of the Director of Public Prosecutions with respect to the prosecution of a person for a specified criminal offence. It may also state whether it is of the opinion that consideration should be given to the taking of action against a person for a specified disciplinary offence or the taking of action against a public official on specified grounds with a view to dismissing, dispensing with the services of, or otherwise terminating the services of the public official.



## Appendix 2: Making corrupt conduct findings

Corrupt conduct is defined in section 7 of the ICAC Act as any conduct which falls within the description of corrupt conduct in either or both sections 8(1) or 8(2) and which is not excluded by section 9 of the ICAC Act.

Section 8 defines the general nature of corrupt conduct. Subsection 8(1) provides that corrupt conduct is:

- a. *any conduct of any person (whether or not a public official) that adversely affects, or that could adversely affect, either directly or indirectly, the honest or impartial exercise of official functions by any public official, any group or body of public officials or any public authority, or*
- b. *any conduct of a public official that constitutes or involves the dishonest or partial exercise of any of his or her official functions, or*
- c. *any conduct of a public official or former public official that constitutes or involves a breach of public trust, or*
- d. *any conduct of a public official or former public official that involves the misuse of information or material that he or she has acquired in the course of his or her official functions, whether or not for his or her benefit or for the benefit of any other person.*

Subsection 8(2) specifies conduct, including the conduct of any person (whether or not a public official), that adversely affects, or that could adversely affect, either directly or indirectly, the exercise of official functions by any public official, any group or body of public officials or any public authority, and which, in addition, could involve a number of specific offences which are set out in that subsection.

Subsection 9(1) provides that, despite section 8, conduct does not amount to corrupt conduct unless it could constitute or involve:

- a. *a criminal offence, or*
- b. *a disciplinary offence, or*

- c. *reasonable grounds for dismissing, dispensing with the services of or otherwise terminating the services of a public official, or*
- d. *in the case of conduct of a Minister of the Crown or a Member of a House of Parliament – a substantial breach of an applicable code of conduct.*

Section 13(3A) of the ICAC Act provides that the Commission may make a finding that a person has engaged or is engaged in corrupt conduct of a kind described in paragraphs (a), (b), (c), or (d) of section 9(1) only if satisfied that a person has engaged or is engaging in conduct that constitutes or involves an offence or thing of the kind described in that paragraph.

Subsection 9(4) of the ICAC Act provides that, subject to subsection 9(5), the conduct of a Minister of the Crown or a member of a House of Parliament which falls within the description of corrupt conduct in section 8 is not excluded by section 9 from being corrupt if it is conduct that would cause a reasonable person to believe that it would bring the integrity of the office concerned or of Parliament into serious disrepute.

Subsection 9(5) of the ICAC Act provides that the Commission is not authorised to include in a report a finding or opinion that a specified person has, by engaging in conduct of a kind referred to in subsection 9(4), engaged in corrupt conduct, unless the Commission is satisfied that the conduct constitutes a breach of a law (apart from the ICAC Act) and the Commission identifies that law in the report.

The Commission adopts the following approach in determining whether corrupt conduct has occurred.

First, the Commission makes findings of relevant facts on the balance of probabilities. The Commission then determines whether those facts come within the terms of sections 8(1) or 8(2) of the ICAC Act. If they do, the Commission then considers section 9 and the

jurisdictional requirements of section 13(3A) and, in the case of a Minister of the Crown or a member of a House of Parliament, the jurisdictional requirements of subsection 9(5). In the case of subsection 9(1)(a) and subsection 9(5) the Commission considers whether, if the facts as found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that the person has committed a particular criminal offence. In the case of subsections 9(1)(b), 9(1)(c) and 9(1)(d) the Commission considers whether, if the facts as found were to be proved on admissible evidence to the requisite standard of on the balance of probabilities and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that the person has engaged in conduct that constitutes or involves a thing of the kind described in those sections.

A finding of corrupt conduct against an individual is a serious matter. It may affect the individual personally, professionally or in employment, as well as in family and social relationships. In addition, there are limited instances where judicial review will be available. These are generally limited to grounds for prerogative relief based upon jurisdictional error, denial of procedural fairness, failing to take into account a relevant consideration or taking into account an irrelevant consideration and acting in breach of the ordinary principles governing the exercise of discretion. This situation highlights the need to exercise care in making findings of corrupt conduct.

In Australia there are only two standards of proof: one relating to criminal matters, the other to civil matters. Commission investigations, including hearings, are not criminal in their nature. Hearings are neither trials nor committals. Rather, the Commission is similar in standing to a Royal Commission and its investigations and hearings have most of the characteristics associated with a Royal Commission. The standard of proof in Royal Commissions is the civil standard, that is, on the balance of probabilities. This requires only reasonable satisfaction as opposed to satisfaction beyond reasonable doubt, as is required in criminal matters. The civil standard is the standard which has been applied consistently in the Commission when making factual findings. However, because of the seriousness of the findings which may be made, it is important to bear in mind what was said by Dixon J in *Briginshaw v Briginshaw* (1938) 60 CLR 336 at 362:

*...reasonable satisfaction is not a state of mind that is attained or established independently of the nature and consequence of the fact or fact to be proved. The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect*

*the answer to the question whether the issue has been proved to the reasonable satisfaction of the tribunal. In such matters 'reasonable satisfaction' should not be produced by inexact proofs, indefinite testimony, or indirect inferences.*

This formulation is, as the High Court pointed out in *Neat Holdings Pty Ltd v Karajan Holdings Pty Ltd* (1992) 67 ALJR 170 at 171, to be understood:

*...as merely reflecting a conventional perception that members of our society do not ordinarily engage in fraudulent or criminal conduct and a judicial approach that a court should not lightly make a finding that, on the balance of probabilities, a party to civil litigation has been guilty of such conduct.*

See also *Rejcek v McElroy* (1965) 112 CLR 517, the *Report of the Royal Commission of inquiry into matters in relation to electoral redistribution*, Queensland, 1977 (McGregor J) and the *Report of the Royal Commission into An Attempt to Bribe a Member of the House of Assembly, and Other Matters* (Hon W Carter QC, Tasmania, 1991).

Findings of fact and corrupt conduct set out in this report have been made applying the principles detailed in this Appendix.



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